No. 48000-0-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

THURSTON COUNTY et al, RESPONDENTS

v.

DONNA ZINK, APPELLANT

RESPONSIVE BRIEF OF RESPONDENTS

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I. INTRODUCTION

The Public Records Act (PRA) promotes disclosure and government transparency. It also contains exemptions to such disclosure. This case is about one of those exemptions, specifically, the exemption that applies to the public inspection and copying of "health care information." The specific health records at issue in this case are evaluations performed by health care professionals under the Special Sex Offender Sentencing Alternative (SSOSA) and the Special Sex Offender Disposition Alternative (SSODA). SSOSA and SSODA evaluations contain recommendations that determine whether certain first-time sex offenders are amenable to treatment, and thus whether they may receive a SSOSA or SSODA – a suspended sentence with intensive clinical treatment and supervision. To complete the evaluation, the health care professional must examine the offender's psychosexual history and condition, and assess the offender's relative risk factors and amenability to treatment. If the offender is deemed amendable to treatment, the professional must also include a detailed treatment plan.

Requestor Donna Zink filed Public Records Act requests demanding that Thurston County provide her with all SSOSA and

SSODA evaluations in its possession. The trial court enjoined Thurston County from this blanket release. This was the correct ruling.

RCW 70.02, the Uniform Health Care Information Act (UHCIA) exempts SSOSA and SSODA evaluations from disclosure because they contain identifiable patient's health care information. *See* RCW 42.56.360(2) ("health care information of patients" under RCW 70.02 is exempt from disclosure under the PRA). By law, only licensed health care professionals can perform SSOSA and SSODA evaluations, and those professionals conduct SSOSA and SSODA evaluations in the same manner as they would any other evaluation of a patient seeking mental health treatment for a sexual behavior problem. The document resulting from these clinical evaluations must contain both a comprehensive psychological assessment and a detailed health care treatment plan.

SSODA evaluations are also exempt from disclosure under RCW 13.50, because they are juvenile records that are not part of the juvenile court file and are thus confidential.

The trial court was correct in enjoining the release of SSOSA and SSODA evaluations under RCW 42.56.540, the provision of the PRA authorizing injunctions against disclosure. The court was presented with detailed, unrebutted evidence demonstrating the

negative repercussions that would follow the blanket disclosure of SSOSA and SSODA evaluations held by Thurston County, including re-traumatizing victims, hindering offenders from rehabilitation and reintegration, and undermining the success of the SSOSA/SSODA system itself. In light of this evidence, the injunction should be affirmed.

Ms. Zink raises several other issues on appeal – namely, whether the trial court should have allowed Plaintiffs to proceed in pseudonym and whether the trial court should have certified a Plaintiff class. Ms. Zink's arguments on these other issues are legally flawed and should be rejected.

II. STATEMENT OF THE ISSUES

1. Does RCW 70.02 exempt SSOSA and SSODA evaluations from disclosure under the PRA?

2. Does RCW 13.50 exempt SSODA evaluations from disclosure under the PRA?

3. Did the trial court correctly conclude that blanket disclosure of SSOSA and SSODA evaluations would not be in the public interest and would substantially and irreparably harm the class members?

4. Did the trial court correctly allow Plaintiffs to proceed in pseudonym?

5. Was the trial court within its discretion to certify a class of Plaintiffs?

III. STATEMENT OF THE CASE

A. The SSOSA system.

The SSOSA system is a legislative creation that provides a sentencing alternative for certain first-time sex offenders. *State v. Panel*, 173 Wn.2d 222, 227, 267 P.3d 349 (2011). Under this system, eligible offenders who are found amenable to treatment must submit to intensive treatment and supervision. RCW 9.94A.670(b)-(d). In exchange, the sentencing court may suspend a portion of the offenders' prison time. RCW 9.94A.670(5)(a).

The rigorous standards laid out by the SSOSA statute drastically reduce the number of offenders eligible for a SSOSA in the first place; as a result, SSOSA sentences are rarely imposed. RCW 9.94A.670(2)-(4). In addition to requiring offenders who are seeking a SSOSA to meet certain threshold eligibility requirements,[1] the SSOSA system requires offenders who are seeking a SSOSA to undergo an evaluation and be found amenable to treatment. The trial court makes its ultimate sentencing determination on the basis of this detailed SSOSA evaluation. RCW 9.94A.670(3). SSOSA evaluations must be

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[1] To be eligible for a SSOSA, the offense the offender has been convicted of must not be a serious violent offense; the offense must not have resulted in substantial bodily injury to the plaintiff; the offender must not have any prior convictions for a sex offense; and the offender must have had an established relationship with, or connection to, the victim so that the sole connection with the victim was not the offense. RCW 9.94A.670(2)(a)-(f).

performed by certified treatment providers – i.e., health care professionals who have been specifically licensed by the Department of Health to evaluate and treat sex offenders. *See* RCW 9.94A.820(1); RCW 18.155.020.

The purpose of the SSOSA evaluation is to assess "the offender's amenability to treatment and relative risk to the community," and to propose a "treatment plan." RCW 9.94A.670(3)(b). To fulfill this purpose, SSOSA evaluations necessarily contain very detailed personal information. They must describe, among other things, the offender's crime; sexual history; perceptions of others; risk factors, including the offender's alcohol and drug abuse, sexual patterns, use of pornography, and social environmental influences; personal history, including the offender's relationships, employment, and education; a family history; a history of the offender's violence or criminal behavior; and the offender's mental health functioning. WAC 246-930-320(2)(e). Taking all of these factors into account, the SSOSA evaluation assesses the appropriateness of community treatment, summarizes the examiner's diagnostic impressions, gauges the offender's risk of reoffending, appraises the offender's willingness for outpatient treatment, and proposes a clear and detailed treatment plan. WAC 246-930-320(2)(f)-(g).

The court decides whether to impose a SSOSA only after receiving and reviewing the evaluation. *See* RCW 9.94A.670(4). When the court does decide to impose a SSOSA, the sentence must include certain terms. The sentence, for example, must always include a period of treatment of up to five years. RCW 9.94A.670(5)(c). It must also impose "[s]pecific prohibitions and affirmative conditions" relating to behaviors that my trigger recidivism, such as viewing pornography or using intoxicants. RCW 9.94A.670(5)(d).

B. The SSODA system.

Like the SSOSA system for adults, juveniles facing a first-time conviction for certain sex offenses in Washington may seek a clement alternative to traditional sentencing pursuant to a SSODA.[2] RCW 13.40.162. Like SSOSA evaluations, SSODA evaluations must be performed by health care professionals who have been specifically licensed by the Department of Health to evaluate and treat sex offenders. RCW 13.40.162(7)(c). And like SSOSA evaluations, the purpose of the SSODA evaluation is "to determine whether the respondent is amenable to treatment." *State v. A.G.S.*, 182 Wn.2d 273, 277, 340 P.3d 830 (2014) (citing RCW 13.40.162(2)). The

[2] The eligibility requirements for a SSODA for a juvenile are similar to those of a SSOSA and can be found at RCW 13.40.162. At a minimum, to qualify for a SSODA a juvenile must be a first-time sex offender and the sex offense the juvenile committed cannot be a serious violent offense. RCW 13.40.162(1).

Washington Supreme Court has described the SSODA as "a psychological report that includes a treatment plan." *Id.* at 278.

C. Plaintiffs filed this action to enjoin the release of SSOSA/SSODA evaluations after Ms. Zink demanded evaluations from Thurston County under the PRA.

On October 3, 2014, Donna Zink sent a request to Thurston County under the PRA, RCW 42.56. She demanded all SSOSA and SSODA evaluations in the possession of Thurston County, among other records.[3] Soon after, Plaintiff's filed this action to enjoin the mass release of SSOSA and SSODA evaluations. CP 7-14.

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[3] Ms. Zink also requested all registration records of sex offenders and all victim impact statements in the possession of Thurston County. CP 255. At the trial court, Plaintiffs sought and obtained a permanent injunction enjoining Thurston County from releasing the registration records on the grounds that RCW 4.24.550 was an "other statute" that exempted the records from disclosure under the PRA; from releasing SSOSA and SSOSA evaluations on the grounds that RCW 70.02 exempted such records; and from releasing SSODA evaluations on the grounds that such records are exempt from disclosure under RCW 13.50. CP. 653-659. (Plaintiffs did not object to the disclosure of the victim impact statements.) Ms. Zink thereafter filed this appeal.

Meanwhile, on April 17, 2015, one of Ms. Zink's other PRA cases, *Doe ex rel. Roe v. Wash. State Patrol*, 185 Wn.2d 363, 374 P.3d 63 (2016) – which also involved the legal questions of whether RCW 4.24.550 exempt registration records of sex offenders from disclosure under the PRA – was argued at the Washington Supreme Court. The Court of Appeals in this case stayed proceedings pending the outcome of that case.

On, April 7, 2016, the Supreme Court decided *Doe ex rel. Roe v. Wash. State Patrol*, holding that the Washington State Patrol was required to release sex offender registration records under the PRA and that RCW 4.24.550 was not an "other statute" prohibiting their release. Because the records in *Doe ex rel. Roe v. Wash. State Patrol* did not include SSOSA or SSODA evaluations, the legal question of whether such records are exempt from disclosure under the PRA was not addressed in that case.

Thus, SSOSA and SSODA evaluations are the only records included in Ms. Zink's original PRA request to Thurston County that remain at issue in this case.

Plaintiffs are current or former Level I sex offenders who are either compliant with registration requirements or who were compliant during the time they were subject to registration requirements. Washington differentiates between offenders who present a high, moderate or low risk for re-offense. *See State v. Brosius*, 154 Wn. App. 714, 720, 225 P.3d 1049 (2010). Level I offenders are those registered sex offenders who have been assessed to pose the lowest risk to the public. RCW 13.40.217(3); RCW 72.09.345(6). Some underwent SSOSA evaluations and successfully completed SSOSA treatment. Others underwent SSODA evaluations and successfully competed SSODA treatment. *See* CP 87-88; APPENDIX, A1-148 to A1-155.[4]

After filing this action, Plaintiffs sought a preliminary injunction, which was granted. CP 35-48, 80-86. The trial court also allowed Plaintiffs to proceed in pseudonym and to represent a certified class of

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[4] Under RAP 9.6 "[a]ny party may supplement the designation of clerk's papers and exhibits prior to or with the filing of the party's last brief." On August 31, 2016, Plaintiffs' filed a Designation of Clerk's Papers, designating the June 19, 2015 Declaration of Vanessa Hernandez in support of Plaintiff's motion for summary judgment and permanent injunction and attached exhibits, among other records. The supplement designation of clerks papers was filed with the Court of Appeals on September 6, 2016, but as of the time of filing this brief Plaintiffs had not received copies of the these clerk's papers. Thus, Plaintiffs have made the June 19, 2015 Declaration of Vanessa Hernandez and attached exhibits an Appendix to this brief and cite to the Appendix (e.g., A1-1, A1-2). If the Court requests, Plaintiffs will supplement this brief with the proper corresponding CP number citations after they receive copies of the supplemental clerks papers.

compliant Level I offenders, many of whom underwent a SSOSA or SSODA evaluation. CP 87-93.

Plaintiffs later moved for summary judgment and a permanent injunction under RCW 42.56.540, the provision of the PRA that authorizes injunctions against disclosure. CP 115-35. Plaintiffs argued that RCW 70.02 prohibited the release of SSOSA and SSODA evaluations, and that RCW 13.50 also prohibited the release of SSODA evaluations. CP 115-35. After full briefing and argument, the trial court granted Plaintiffs' motion. CP 653-59. This appeal followed.

IV. ARGUMENT

A. The legal framework of PRA exemptions

The PRA is a statutory scheme that provides procedures for the public to inspect and copy public records, but also provides a number of exemptions to such disclosure. The PRA itself lays out some of the exemptions to disclosure. *Doe ex rel. Roe v. Wash. State. Patrol*, No. 90413-8, 2016 WL 1458206, at *3 (Wash. Apr. 7, 2016). One of these exemptions is for RCW 70.02, which applies to "public inspection and copying of health care information of patients." RCW 42.56.360(2).

B. RCW 70.02 prohibits Thurston County from releasing SSOSA and SSODA evaluations.

SSOSA and SSODA evaluations are exempt from the PRA because they qualify as exempt "health care information of patients" under RCW 70.02.

The PRA explicitly incorporates certain aspects of the UHCIA, RCW 70.02. The PRA states that "[c]hapter 70.02 RCW applies to public inspection and copying of health care information of patients," thus exempting the "health care information of patients" from the PRA. RCW 42.56.360(2); s*ee also Prison Legal News, Inc. v. Dep't of Corr.*, 154 Wn.2d 628, 644, 115 P.3d 316 (2005). SSOSA and SSODA evaluations qualify as "health care information of patients."

Under RCW 70.02, "health care information" is defined as "any information, ... recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care." RCW 70.02.010(16). SSOSA and SSODA evaluations fit squarely within that definition.

By law SSOSA evaluations can only be performed by certified health care professionals who have been specifically licensed by the Department of Health to evaluate and treat sex offenders. *See* RCW 9.94A.820(1); RCW 18.155.020. These professionals must "possess an underlying credential as a licensed health care professional," and must "have extensive training in a mental health field, as well as

specialty training in the evaluation and treatment of sexual offense behavior." APPENDIX, A1-93, ¶ 11.

SSOSA evaluations are no different from any other clinical evaluation conducted by a mental health care provider, a fact that is demonstrated and supported by the expert testimony in the record. The Washington Association for the Treatment of Sexual Abusers (WATSA) testified that SSOSA evaluations contain the provider's diagnostic impressions; an assessment of psychological, behavioral, and lifestyle factors; and a written treatment plan. *Id.*, ¶ 8. And, critically, "the clinical approach of an evaluator completing a SSOSA evaluation is the same as the clinical approach of an evaluator conducting an intake for a non-criminal justice involved person seeking mental health treatment for a sexual behavior problem." *Id.*

The statutorily declared purpose of SSOSA evaluations is to determine whether offenders are amenable to treatment. RCW 9.94A.670(3). To determine whether an offender is amenable to treatment for a condition – i.e., amenable to health care – the evaluator must necessarily prepare a medical evaluation of the offender. Such an evaluation is precisely the kind of information that "directly relates to the patient's health care." RCW 70.02.010(16).

An offender undergoing a SSOSA evaluation also qualifies as a "patient." RCW 42.56.360(2) (exempting health care information "of patients"). A "patient" is defined as "an individual who receives or has received health care." RCW 70.02.010(31). "Heath care" is defined broadly to include "any care, service, or procedure provided by a health care provider" in order to "diagnose, treat, or maintain a patient's physical or mental condition." RCW 70.02.010(14). Only health care providers may perform SSOSA evaluations. RCW 9.94A.820(1); RCW 18.155.020; *see also* RCW 70.02.010(18) (defining "health care provider"). In performing a SSOSA evaluation, the health care provider is providing a service that is intended to "diagnose" and "treat" the offender's condition. In determining whether the offender is amenable to treatment, the health care provider is necessarily diagnosing the offender. *See* RCW 9.94A.670(3) (evaluation is made to "determine whether the offender is amenable to treatment"). And in proposing a treatment plan the health care provider is helping to treat the offender – i.e., an offender cannot be treated without a plan of treatment. RCW 9.94A.670(3)(b).

The direct relation of a SSOSA evaluation to medical treatment makes it quite different from an employer-administered drug test, which does not necessarily bear any relationship to medical treatment.

See Hines v. Todd Pac. Shipyards Corp., 127 Wn. App. 356, 368, 112 P.3d 522 (2005) (drug test was condition of employment; "[its] purpose ... was not health care or medical treatment). In contrast, the Supreme Court has indicated that SSOSA evaluations constitute health care information. Recently, in *State v. A.G.S.*, the Supreme Court recognized that "[t]he purpose of the SSODA evaluation is 'to determine whether the respondent is amenable to treatment,'" and despite being a mandatory evaluation designed to help a sentencing court a SSODA evaluation is "not a court document. Rather, it is a psychological report that includes a treatment plan."[5] *A.G.S.*, 182 Wn.2d at 277-78. SSODA evaluations (and SSOSA evaluations performed for the same purpose) are inherently mental health records.

Indeed, in *State v. Sanchez*, 177 Wn.2d 835, 306 P.3d (2013), the Supreme Court recognized that SSODA evaluations contain mental health reports and indicated that such evaluations are protected from disclosure by RCW 70.02 and the federal Health Information Portability and Accountability Act of 1996 (HIPPA):

> Because his SSODA evaluation contains mental health reports, Sanchez contends that it is protected from

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[5] As discussed, SSOSA and SSODA evaluations serve a similar purpose and must include similar content. *Compare* RCW 9.94A.670 (SSOSA) *with* RCW 13.40.162 (SSODA). It is plaintiffs' position that the RCW 70.02 exemption under the PRA applies equally to SSOSA and SSODA evaluations.

> disclosure to the sheriff's office by chapter 70.02 RCW and [HIPAA]....
>
> While it is certainly true that chapter 70.02 RCW and HIPAA protect mental health records, *see* RCW 70.02.010(5)(a); 42 U.S.C. § 1320d(4)(b), that protection is conditional. Chapter 70.02 RCW specifically provides for the release of health care information, without authorization by the patient, if "required by law." Similarly, HIPPA permits the release of personally identifying medical information to law enforcement by court order. Therefore, neither HIPAA nor chapter 70.02 RCW applies where a court, acting pursuant to statutory mandate (here, RCW 4.24.550), orders the release of medical information to law enforcement.

Sanchez, 177 Wn.2d at 849 (internal citations omitted). While the statutory mandate to disclose information to law enforcement, RCW 4.24.550(6), overrode RCW 70.02's prohibition on the release of patients' health care information in *Sanchez*, no such mandate applies in this case; therefore, RCW 70.02 and RCW 4.56.360(2) control.

The UHCIA specifically limits the disclosure of mental health records in Sections .230 through .260. RCW 70.02.230 states:

> Except as provided in this section [and other enumerated sections], the fact of admission to a provider for mental health services and all information and records compiled, obtained, or maintained in the course of providing mental health services to either voluntary or involuntary recipients of services at public or private agencies must be confidential.[6]

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[6] RCW 70.02.230(1) (emphasis added).

RCW 70.02.230 enumerates specific instances where confidential mental health care information may be disclosed without the patient's consent. For example, disclosure is permitted between qualified professionals who are providing services to the patient or to appropriate law enforcement agencies that need the information to respond to an emergent situation that poses a risk to the public. *See* RCW 70.02.230(2)(a) and (h). Disclosure is also permitted when mandatory under HIPPA. *See* RCW 70.02.230(2)(e). Notably, though, each of these exceptions involves a professional or family member requesting the information for a particular purpose. Nothing in the law gives Thurston County permission to release health records en masse to the general public. RCW 42.56.360(2) (exempting from the PRA information covered by RCW 70.02).

The fact that SSOSA evaluations are mandatory evaluations designed to help a sentencing court does not mean that the evaluations do not contain protected "health care information." "[A] SSOSA evaluation serves many important functions," not just one. *Koenig v. Thurston Cty.*, 175 Wn.2d 837, 847, 287 P.3d 523 (2012). Nothing in RCW 70.02 indicates that a document cannot contain health care information just because it also relates to sentencing. While a SSOSA evaluation aids a sentencing court's decision, the court

"cannot make this decision without first knowing whether the offender is amenable to treatment." *State v. Young*, 125 Wn.2d 688, 696, 888 P.3d 142 (1995). And to determine amenability to treatment – specifically health care treatment – the evaluator must necessarily perform a health care evaluation. That is why the evaluation is performed by a health care professional, RCW 18.155.020, who employs the same clinical approach that an evaluator would use for any patient "seeking mental health treatment for a sexual behavior problem." APPENDIX, A1-92, ¶ 8.

Nor does the fact that SSOSAs and SSODAs are held by law enforcement automatically subject them to disclosure. As discussed, the UHCIA applies to PRA requests, RCW 42.56.360(2). And as RCW 70.02.005 recognizes, "[i]t is the public policy of this state that a patient's interest in proper use and disclosure of the patient's health care information survives even when the information is held by persons other than health care providers."[7] This necessarily includes law enforcement.

In sum, a SSOSA or SSODA evaluation is performed by a health care professional who treats the offender as a patient and employs normal clinical methods to produce an assessment of the offender's

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[7] RCW 70.02.005(4) (emphasis added).

condition and formulate a treatment plan. If a SSOSA or SSODA evaluation is not the "health care information" of a "patient" under RCW 70.02, it is difficult to see what kind of health care information could be exempt from public disclosure.

C. *Koenig* does not Control this Case.

Koenig v. Thurston County, 175 Wn.2d 837, 287 P.3d 523 (2012) does not control the outcome of this case. *Koenig* merely held that SSOSA evaluations do not fall under RCW 42.56.240(1)'s "investigative records" exemption from disclosure. *Koenig*, 175 Wn.2d at 849. *Koenig* cannot be read to dispose of every possible exemption to the PRA, including those Koenig does not discuss. "In cases where a legal theory is not discussed in the opinion, that case is not controlling on a future case where the legal theory is properly raised." *Berschauer/Phillips Constr. Co. v. Seattle Sch. Dist. No. 1*, 124 Wn.2d 816, 824, 881 P.2d 986 (1994).

The reach of *Koenig* is confirmed by the Court of Appeals' opinion in that case. There, the Court of Appeals held that Thurston County had waived any argument that the UHCIA prohibited disclosure. *Koenig v. Thurston Cty.*, 155 Wn. App. 398, 418, 229 P.3d 910 (2010). It is unsurprising that the Supreme Court did not discuss an

argument waived at the Court of Appeals. It is irrelevant that Thurston County or amici discussed the UHCIA in their briefs.

Plaintiffs have never relied upon the investigative records exemption and neither appellate court in *Koenig* addressed whether SSOSA evaluations are exempt health care records. Thus, *Koenig* does not control here.

D. SSODAs of Plaintiffs are strictly exempt from disclosure under RCW 13.50.

RCW 13.50 is an "other statute" that specifically exempts SSODA evaluations from the PRA under RCW 42.56.070(1). Washington classifies records pertaining to a juvenile's criminal offense into three categories: (a) the official juvenile court file, which includes court filings, findings, orders, and the like; (b) the "social file," which contains reports of the probation counselor; and (c) other miscellaneous records. RCW 13.50.010(1); *A.G.S.*, 182 Wn.2d at 278-80. While the official court file is open to the public unless sealed, RCW 13.50.050(2), all other juvenile offense records are generally confidential. RCW 13.50.050(3).

Washington Courts have unambiguously determined that RCW 13.50 is an "other statute" that exempts confidential juvenile records from the PRA, *Deer v. Dep't of Soc. & Health Servs.*, 122 Wn. App. 84, 91, 93 P.3d 195 (2004), and that SSODA evaluations are not part of

the court file and are therefore confidential juvenile records. *A.G.S.*, 182 Wn.2d at 278-80. Disclosure of SSODA evaluations to a member of the general public such as Ms. Zink would clearly violate RCW 13.50.050 and is not required by the PRA.

E. The Trial Court Properly Enjoined Thurston County from Releasing SSOSA and SSODA evaluations to Ms. Zink.

Plaintiffs sought a permanent injunction against disclosure under RCW 42.56.540. Under that statute, a court may issue an injunction if it finds (1) that the record names or specifically pertains to the party seeking an injunction; (2) that an exemption against disclosure applies; and (3) that "disclosure would not be in the public interest and would substantially and irreparably harm [the complaining] party or a vital government function." *Ameriquest Mortg. Co. v. Office of Att'y Gen.*, 177 Wn.2d 467, 487, 300 P.3d 799 (2013) (citing RCW 42.56.540). The trial court found that Plaintiffs had satisfied all of these requirements. CP 658.

i. Detailed, unrebutted testimony supports the trial court's findings that SSOSA evaluations contain health care information and that disclosure would substantially and irreparably harm the class members.

The trial court found that "health care information is included in the [SSOSA and SSODA] evaluations, and they relate to a patient's health care." CP 657. The trial court also found, citing to *State v.*

A.G.S., 182 Wn.2d 273, that SSODAs are "psychological reports that include treatment plans." CP 657. Finally, the trial court found that "the declarations submitted by the Plaintiff and others credibly attest to the substantial and irreparable harm to class members if the requested documents were disclosed without redactions." *Id.* Ms. Zink challenges these findings. Ms. Zink's challenge fails.

Plaintiffs submitted testimony of experts – whose expertise no party has challenged as inadmissible under ER 702 – explaining why SSOSA and SSODA evaluations contain medical, mental health, and other personal information, along with the evaluator's diagnostic assessment of that information. The testimony is unrebutted; no party submitted evidence rebutting the experts' testimony on this point. And the testimony is both detailed and particularized.

For example, the Plaintiffs submitted testimony from Brad Meryhew, an attorney who is a member of the Sex Offender Policy Board (SOPB) and who has represented hundreds of sex offenders over a distinguished career. APPENDIX, A1-76 to A1-86. Based on his expertise, he testified that SSOSA evaluations "include not only an offender's history and details about their crime, but also intimate details about an offender's entire life," such as "past sexual partners, victims and non-victims, and the details of their sexual activities." *Id.*,

A1-79, ¶ 11. They "also include the intimate details of an offender's marriage or significant relationships." *Id.*, A1-79, ¶ 12.

Plaintiffs submitted similar particularized testimony from WATSA, through its experts, *see* APPENDIX, A1-89 to A1-91, ¶¶ 2-5, explaining that SSOSA evaluations

> include a personal history (including a psychosexual history), an assessment of current functioning, a mental health diagnosis (when indicated, and a proposed set of treatment goals.... SSOSA evaluations must contain the [evaluator's] written conclusions and recommendations, which shall include a summary of the evaluator's diagnostic impressions, specific assessments of risk factors, willingness of the offender to engage in outpatient treatment, and a written treatment plan....

Id., A1-92, ¶ 8. Plaintiffs also submitted testimony from John Clayton, Assistant Secretary of the Juvenile Justice and Rehabilitation Administration, a division of the Department of Social and Health Services, who explained that "[r]elease of SSODA evaluations for youth supervised by the juvenile courts, and who are generally the lowest risk juvenile sex offenders in the state would violate a variety of statutes and cause significant harm to impacted youth, their families, and victims. Release of any of this information would impact known risk factors in a negative way." APPENDIX, A1-141.

Plaintiffs themselves corroborated this expert testimony. One Plaintiff testified that his SSOSA evaluation included "all sorts of

questions about my personality and my mental state and medications and health conditions. They also asked about my sexual history and preferences. It was all very personal but I did the evaluations so I could get treatment." APPENDIX, A1-144, ¶ 5. Another Plaintiff testified that during his SSOSA evaluation,

> [t]he counselor made me discuss my home life, my family life, my childhood, everything about my life up to that point. We talked substance abuse and mental health issues, not just for me but also about my family. The evaluation revealed things about me that I hadn't ever put together, it showed me how big the gap was between where I was in life and where I wanted to be. I knew I could be better than that and treatment could only help.

APPENDIX, A1-149, ¶ 4.

This testimony from both expert and fact witnesses is detailed and unrebutted. The trial court did not error by accepting it.

ii. Detailed, unrebutted testimony supports the trial court's finding that release of SSOSA/SSODA evaluations would not be in the public's interest.

The trial court found that "unredacted disclosure would not be in the public interest ...." CP 658. This finding was based on substantial evidence. Plaintiffs submitted concrete evidence showing that mass disclosure of SSOSA evaluations would injure the public interest because it would (i) discourage offenders from seeking

evaluations, or from being candid with their evaluators; (ii) re-traumatize victims; and (iii) disclose sensitive health information.

a. *Disclosure would discourage offenders from seeking evaluations, and from being candid with their evaluators.*

The public has an interest in the proper operation of the SSOSA system. *See Koenig*, 175 Wn.2d at 847 ("We do not doubt the value of SSOSA evaluations. Indeed, we have recognized that the legislature developed this sentencing alternative for first time offenders to prevent future crimes and protect society."). Experts who have represented sex offenders in the SSOSA/SSODA process testified that

> general public disclosure of very intimate, personal details about themselves, their family, and all of their past sexual partners will undoubtedly lead many offenders to refuse to participate in valuation and assessment, and will lead others to offer less than complete information. This erosion of the quality of information available to the courts, treatment providers, corrections, and law enforcement will negatively affect public safety.

APPENDIX, A1-82, ¶ 20. WATSA also testified that

> if an exception is made [to RCW 70.02 and HIPAA] for SSOSA treatment records and these become subject to public disclosure, this could significantly and negatively impact our ability to meaningfully engage offenders in the treatment process. It is further our position that by deterring meaningful participation in SSOSA treatment, release of these mental health records to the public would ultimately result in an increased – not decreased – risk to the community.

APPENDIX, A1-94, ¶ 14. The testimony on which the trial court relied consisted of expert predictions rationally based on past experience and unrebutted by countervailing testimony.

b. *Disclosure would re-traumatize victims.*

The public has an interest in not re-traumatizing victims of sex offenses by exposing them to the public. *See, e.g.*, *State v. Kalakosky*, 121 Wn.2d 525, 547, 852 P.2d 1064 (1993) (noting that sexual assault victims need privacy in order to successfully recover, and observing that "[o]f recent years, legislatures and courts have attempted to provide rape victims some privacy rights"). The record supports that mass disclosure of SSOSA/SSODA evaluations would re-traumatize a substantial number of victims.

SSOSA/SSODA evaluations contain sensitive information about not just the offenders themselves, but also their victims. *See* APPENDIX, A1-79, ¶ 11. The victim's identity will often be obvious from a SSOSA evaluation; disclosure of the SSOSA evaluation will thus disclose their identity and re-traumatize them. APPENDIX, A1-79, A1-83, ¶¶11, 24 ("The disclosure of a relative perpetrator for example almost inevitably leads to the person they victimized being disclosed as the victim."); *see also* APPENDIX, A1-141.

c. *Disclosure would expose sensitive health care information.*

The public has an interest in preserving the confidentiality of sensitive health care information. *See Planned Parenthood of the Great NW v. Bloedow*, 187 Wn. App. 606, 628, 350 P.3d 660 (2015). As discussed in detail above, mass disclosure of SSOSA/SSODA evaluations would release sensitive health care information.

F. The Trial Court Properly Allowed Plaintiffs to Proceed in Pseudonym.

Without sealing court filings from public access, the trial court allowed Plaintiffs to proceed in pseudonym. CP 91-93. Ms. Zink challenges this decision as an improper order to seal. This is incorrect; there was no improper order to seal. The Court should affirm the trial court's decision under well-established principles governing pseudonymity.[8]

i. By allowing Plaintiffs to proceed in pseudonym, the trial court was not sealing documents.

GR 15 defines what it means to seal a document. "To seal," the rules says, "means to protect from examination by the public and unauthorized court personnel." GR 15(b)(4). An order to redact "shall be treated as ... [an] order to seal," and to redact means to protect "a

[8] Appellate courts review for an abuse of discretion orders granting leave to proceed anonymously. *See Does I Thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1069 (9th Cir. 2000).

portion or portions of a specified court record" from "examination by the public and unauthorized court personnel." GR 15(b)(4), (5).

Under GR 15, then, a court filing is sealed or redacted when the filing, or portions of it, are available to the court, but not available to the public. Here, though, everything available to the trial court was also available to the public.

Washington precedents on sealing also suggest that pseudonymous litigation does not amount to sealing. In adopting a presumption against sealing, for example, our Supreme Court relied on the public's "right of access to court proceedings" under the Washington Constitution. *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 36, 640 P.2d 716 (1982). "[T]o maintain public confidence in the fairness and honesty of the judicial branch," the public has a right "to access open courts where they may freely observe the administration of civil and criminal justice." *Rufer v. Abbott Labs.*, 154 Wn.2d 530, 542, 114 P.3d 1182 (2005). As the Supreme Court, quoting a trial court, has observed, the public presumptively has access to "[e]verything that passes before this Court." *Id.*

Here, allowing Plaintiffs to proceed in pseudonym did not abridge the public's right to access anything that passed before the trial court. It did not deprive the public of any information that the trial

court possessed or prevent the public from scrutinizing the trial court's decisions.

Plaintiffs' names, therefore, resemble the "information surfacing during pretrial discovery that does not otherwise come before the court. *Rufer*, 154 Wn.2d at 541. Because that information "does not become part of the court's decision making process," the public's rights that apply to court filings "do[ ] not speak to its disclosure." *Dreiling v. Jain*, 151 Wn.2d 900, 910, 93 P.3d 861 (2004). Thus, "there is not yet a public right of access with respect to these materials," and only "good cause" need be shown before those materials may be restricted. *Rufer*, 154 Wn.2d at 541. Here, as explained below, Plaintiffs showed good cause for proceeding in pseudonym.[9]

ii. The court acted within its discretion when it allowed Plaintiffs to proceed in pseudonym.

While CR 10(a)(1) provides that complaints "shall include the name of all the parties," it is silent about whether parties may use *false* names. Our Supreme Court, however, has said in passing that "a plaintiff may proceed under a pseudonym to protect a privacy interest."

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[9] Ms. Zink recently asked the Supreme Court to rule that the same rules governing orders to seal also governed orders allowing litigants to proceed in pseudonym. The Supreme Court did not reach this issue and declined to express an option on it. *Doe ex rel. Roe v. Wash. State Patrol*, 185 Wn.2d 363, 385 & n.6, 374 P.3d 63 (2016).

N. Am. Council on Adoptable Children v. Dep't of Soc. & Health Servs., 108 Wn.2d 433, 440, 739 P.2d 677 (1987). The federal courts, whose Federal Rule of Civil Procedure 10(a) is materially identical in relevant part to CR 10(a)(1), have come to the same conclusion. *See Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 189 (2nd Cir. 2008) (citing cases); *Does I Thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000) (same). These federal courts have identified many factors that may be considered when a court exercises its discretion to permit proceeding in pseudonym – cautioning always, though, that any list is "non-exhaustive" and that courts should take into account other factors relevant to the particular case at hand.[10] *Sealed Plaintiff*, 537 F.3d 189-90.

The trial court recognized that "[t]here is no dispute that the Plaintiffs exist and have an interest in this litigation," CP 92, and only by proceeding in pseudonym could Plaintiffs have meaningful access to injunctive relief. It stated: "Plaintiffs seek to exercise their right under the Public Records Act ("PRA"), to enjoin release of personally identifying information which they contend is exempt from the PRA. Forcing Plaintiffs to disclose their identities to bring this action would

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[10] Because no appellate case law in Washington speaks to when and how parties may proceed in pseudonym, Plaintiff's rely here on persuasive federal authorities.

eviscerate the ability to seek relief." *Id.* In so finding, the trial court did not abuse its discretion.

Courts agree that use of pseudonyms is appropriate when "the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity." *See M.M. v. Zavaras*, 139 F.3d 798, 803 (10th Cir. 1998). Here, as the trial court noted, the very harm that Plaintiffs sought to prevent in bringing this action would have been realized if the trial court had forced Plaintiffs to publicly disclose their identities. *See Doe v. Harris*, 640 F.3d 972, 973 n.1 (9th Cir. 2011) (allowing Plaintiff "to continue to proceed under a pseudonym because drawing public attention to his status as a sex offender is precisely the consequence he seeks to avoid by bringing this suit"); *Roe v. Ingraham*, 364 F. Supp. 536, 541 & n.7 (S.D.N.Y. 1973) (permitting plaintiffs to proceed in pseudonym in challenging the constitutionality of a statute requiring disclosure of their identities as individuals prescribed narcotic drugs). It would also have undermined the PRA itself, which permits challenges to the release of records by individuals named in the records. *See* RCW 42.56.540. Indeed, forcing Plaintiffs to disclose their identities to access the only relief available – court protection of exempt records – would have raised serious due process concerns. *Cf. Bodie v. Connecticut*, 401 U.S. 371, 376-77 (1971)

(recognizing a due process right to access to the courts when judicial review is necessary to resolve a dispute).

The trial court determined that disclosing Plaintiffs' identities would cause them permanent harm and that the Plaintiffs faced "a significant risk of physical, mental, economic, and emotional harm if their identities are disclosed." CP 92. This determination is correct.

Like the trial court here, other courts have allowed anonymity for plaintiffs "when identification creates a risk of retaliatory physical or mental harm" and "when anonymity is necessary to preserve privacy in a matter of sensitive and highly personal nature." *Does I Thru XXIII*, 214 F.3d at 1068. Courts have permitted the use of pseudonyms by individuals who receive mental health treatment when the case would necessarily reveal their illness or treatment. *See, e.g.*, *Doe v. Colautti*, 592 F.2d 704, 705 (3rd Cir. 1979) (pseudonym used by plaintiff challenging state benefits for hospitalization in private mental institutions); *Doe v. Hartford Life and Accident Ins. Co.*, 237 F.R.D. 545, 549-50 (D.N.J. 2006) (collecting and discussing cases). Additionally, courts have allowed parties to proceed in pseudonym "when nondisclosure of the party's identity is necessary to protect a person from harassment, injury, ridicule or personal embarrassment." *Does I Thru XXIII*, 214 F.3d at 1067-68.

These factors are present here. Plaintiffs and experts familiar with the treatment of sexual offenders testified by declaration that if Plaintiffs were publicly identified as registered sex offenders they would face physical and verbal abuse, harassment, economic loss, and psychological harm. *See, e.g.*, APPENDIX, A1-76 to A1-86. Experts in the treatment of sexual offenders also testified that broad-based dissemination of mental health treatment records will undermine the efficacy of the treatment process. *Id.* The trial court did not abuse its discretion by agreeing with this testimony.

The trial court also recognized that "the public's right to access the proceedings will not be compromised apart from its ability to ascertain the names of individual Plaintiffs." CP 92. In so reasoning, the trial court did not abuse its discretion: "[W]here a lawsuit is brought solely against the government and seeks to raise an abstract question of law that affects many similarly situated individuals, the identities of the particular parties bringing suit may be largely irrelevant to the public concern with the nature of the process." *See Doe v. Del Rio*, 241 F.R.D. 154, 158 (S.D.N.Y. 2006). The primary questions in this case are legal questions of statutory interpretation that affect hundreds, if not thousands, of people that are similarly situated to the Plaintiffs. Plaintiffs represent a certified class of those people. Under

these circumstances, the precise names of the named Plaintiffs have little bearing on the public's interest in this case.

The trial court also did not abuse its discretion when it found that Thurston County and Ms. Zink would not be prejudiced by allowing Plaintiffs to proceed in pseudonym. CP 92. Neither Thurston County nor Ms. Zink challenged the Plaintiff's existence or credibility. During oral argument on Plaintiffs' motion to proceed in pseudonym, the Court conducted the following analysis:

> THE COURT: So on this point, it appears to me, from looking at the case law, that the concern in the one case that I could find in a Washington case was that specific plaintiffs be identified and then if there was protection needed that you could seal or do whatever, which definitely would invoke the Ishikawa Factors. But in this case it doesn't seem like there is dispute the even though we don't have the identities of the plaintiffs in the record, that folks like the plaintiffs exist and they are real people, and it's not hard without specific names for the parties to know that specific people like that exist that are affected. Would that be true?
>
> MR. SKINDER [for Thurston County]: Very true, Your Honor. I can let the Court know that my understanding is there are – just on the Level I sex offender portion of this – and obviously the requests bring in different numbers in terms of population for that, but we're probably talking over 600 current offenders that – I can tell the Court there are real people that are, as the Court said, directly affected by this and they do exist.
>
> THE COURT: And it wouldn't be subject to speculation?
>
> MR. SKINDER: Correct, it would not.

RP 14-15. This led the court to conclude that "[t]here is no dispute that the Plaintiffs exist and have an interest in this litigation." *Id.*

Next, the trial court was within its discretion to find that Plaintiffs' privacy interests in proceeding in pseudonym outweighed the public's interest in their identity. CP 92. The public's access to the case was no limited apart from being unable to determine the identities of Plaintiffs. And, as noted above, the Plaintiff's identities are largely irrelevant. Thus, the public's minimal interest in learning Plaintiff's names is outweighed by Plaintiff's interest in meaningful access to judicial review and in avoiding harm to themselves and their loved ones.

Finally, the trial court found that "[p]ermitting Plaintiffs to proceed in pseudonym is the least restrictive means to protect their interests" and that "no other reasonably alternative exists." CP 92. The trial court's finding on this was not an abuse of discretion, particularly as Ms. Zink has suggested no alternative that could protect Plaintiffs' interests.

G. The Trial Court Acted Well Within its Discretion by Certifying a Class.

The trial court certified a Plaintiff class defined as:

> All individuals named in registration forms, a registration database, SSOSA evaluations, or SSODA evaluations in the possession of Thurston County, and classified as sex

> offenders at risk level I who are compliant with the conditions of registration or have been relieved of the duty to register.

CP 87. Ms. Zink challenges this class certification. She does not argue that the trial court misapplied CR 23. Rather, she argues that the PRA forecloses class actions altogether. According to Zink, each "person who is named in the record or to whom the record pertains," RCW 42.56.540, must be joined as a party. This argument should be rejected. It conflicts with the civil rules and binding precedent interpreting those rules, and it also misunderstands the nature of class actions.

Because Ms. Zink does not deny that CR 23 itself allows class certification in this case, the trial court's certification decision should be affirmed. After all, "[c]lass certification is governed by CR 23." *Moeller v. Farmers Ins. Co. of Wash.*, 173 Wn.2d 264, 278, 267 P.3d 998 (2011). And civil rules like CR 23 "govern all civil proceedings" except when they are "inconsistent with rules or statutes applicable to special proceedings." CR 81(a). The PRA, however is not one of those "statutes applicable to special proceedings." As the Supreme Court has held, the PRA does "not create a special proceeding subject to special rules," so "the normal civil rules are appropriate for prosecuting a PRA claim." *Neighborhood Alliance of Spokane Cty. v. Cty. of*

Spokane, 172 Wn.2d 702, 716, 261 P.3d 119 (2011). Thus, CR 23 controls here, and under CR 23 certification was appropriate.

More fundamentally, Ms. Zink's argument misunderstands the representative nature of class actions. In a class action, representative plaintiffs stand in for all the other members of the class. Those members are then treated as parties to the litigation. *See Califano v. Yamasaki*, 442 U.S. 682. 700-01 (1979) (class actions are "an exception to the usual rule that litigation is conducted by and on behalf of individual named parties only," and holding that a class action could be maintained even under a statute that referred merely to an "individual"). That is why a class-action judgment binds all unexcluded members of the class. CR 23(c)(3). And that is why moving for class action certification on appeal "amounts, in effect, to a request for a substitution of parties." *Defunis v. Odegaard*, 84 Wn.2d 617, 623, 529 P.2d 438 (1974).

The representative nature of class actions also means that even a statute phrased in individual terms will allow for a class action. So, for example, even though the Consumer Protection Act authorizes money damages and injunctive relief only to those who "bring a civil action," RCW 19.86.090, the Court of Appeals has held that this provision applies not only to the named plaintiffs, but "to the

represented class members" too. *Smith v. Behr Process Corp.*, 113 Wn. App. 306, 346, 54 P.3d 665 (2002). Even though those class members did not bring the action at first, they are deemed to be present as parties through the class-action mechanism.

For the same reason, the PRA does not forbid class actions. Through CR 23, class representatives stand in for all other class members "named in [a] record or to whom [a] record specifically pertains." RCW 42.56.540. If the class representatives' "motion and affidavit[s]" supply proof that records name or specifically pertain to both the class representatives and the other members of the class, *id.*, then a class-wide injunction under RCW 42.56.540 is perfectly acceptable. Because Plaintiffs supplied precisely that proof here, the trial court's class certification and class-wide injunction was proper.

H. **Ms. Zink's remaining arguments are not grounded in law and should be rejected.**

Finally, Ms. Zink makes several arguments that are not grounded in law and should be rejected. First, Ms. Zink argues that SSOSA evaluations are required to be open and available to the public pursuant to RCW 9.94A.475 and .480(1). Br. of Appellant, p. 36-37. This is incorrect. RCW 9.94A.475 states that for certain felonies, "all recommended sentencing agreements or plea agreements and the sentences for [ ] felony crimes shall be made and retained as public

records," (emphasis added) not all documents recommending a particular sentencing alternative or disposition. As Brad Merryhew, a member of the SOFB describes, a SSOSA or SSODA evaluations does not always result in a SSOSA or SSODA sentence. Instead, the number of sex offenders meeting the requirements for SSOSA sentencing has declined from approximately 40% to 15% between 1986 and 2004. APPENDIX, A1-80 to A1-81, ¶ 15. The courts have recognized this distinction as well: *Koenig* describes the SSOSA not as a sentencing agreement but as "a basis for the court to impose sentencing alternatives." *Koenig*, 175 Wn.2d at 849. Further, the Sentencing Reform Act contains standards "solely for the guidance of prosecutors" and may not be relied upon to create any enforceable rights." RCW 9.94A.401.

Second, Ms. Zink argues that SSOSA and SSODA evaluations are "conviction records" that must be available to the public without restriction under RCW 10.97.050(1). Br. of Appellant, p. 37-38. This is also incorrect. The Criminal Records Privacy Act, as its name suggests, was enacted with the express policy of providing for the "completeness, accuracy, confidentiality and security of criminal history record information." SSOSA and SSODA evaluations are much broader than the narrow definition of "conviction record" as it is

defined by RCW 10.97.030. Conviction records are basically rap sheets, containing only the name, arrest information and disposition of the arrest if it led to a conviction. RCW 10.97.030(3). The detailed and highly personal information contained in SSOSA and SSODA evaluations is not "criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject." RCW 10.97.030(3) (definition of conviction record).

V. CONCLUSION

The trial court's class certification and order allowing Plaintiffs to proceed in pseudonym, and the trial court's summary judgment permanent injunction orders regarding SSOSA and SSODA evaluations, should be affirmed.

Dated this 7th day of September, 2016.

Respectfully submitted,

GORDON THOMAS HONEYWELL LLP

By _____

Salvador A. Mungia, WSBA No. 14807
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Prachi Dave, WSBA No. 50498
Attorneys for Respondents Does P, Q, R & S, as individuals and on behalf of those similarly situated

VI. APPENDIX

Declaration of Vanessa T. Hernandez In Support of Motion for Summary Judgment	A1

CERTIFICATE OF SERVICE

I, Karen Heaney, declare under penalty of perjury under the laws of the State of Washington that I served the attached Response via email on the following:

John C. Skinder at skindej@co.thurston.wa.us
Donna Zink at dzink@centurytel.net
Jeff Zink at jeffzink@centurytel.net

DATED this 7th day of September, 2016 at Tacoma, Washington.

Karen Heaney, Legal Assistant
Kheaney@gth-law.com
Gordon Thomas Honeywell

[4822-9105-4135]

☐ EXPEDITE
☐ No Hearing Set
☑ Hearing is Set
Date: July 17, 2015
Time: 11:00 AM
Judge/Calendar: Hon. Carol Murphy / Civil Calendar

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

JOHN DOE P, JOHN DOE Q, JOHN DOE R, and JOHN DOE S, as individuals and on behalf of those similarly situated,

Plaintiffs,

v.

THURSTON COUNTY, a municipal organization, and its departments THURSTON COUNTY PROSECUTING ATTORNEY and THURSON COUNTY SHERIFF

Defendants,

v.

DONNA ZINK, a married woman,

Requestor.

No. 15-2-00094-0

DECLARATION OF VANESSA T. HERNANDEZ

I, Vanessa Hernandez, declare as follows:

1. I am an attorney with the American Civil Liberties Union of Washington Foundation (ACLU) and counsel for Plaintiffs in this case.
2. I represent classes of Level I sex offenders seeking to enjoin production of their records in similar litigation. I attach to this declaration as Exhibit 1 a true and correct copy of the Order Granting Plaintiff's Motion for Summary Judgment and Permanent Injunction in

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SEATTLE, WA 98164
(206) 624-2184

John Doe A v. Washington State Patrol, No. 13-2-41107-5 SEA (King County Superior Court), consolidated with *John Doe C v. Wash. Ass'n of Sheriffs and Police Chiefs*, No. 14-2-05984-1 SEA (King County Superior Court)[1]; as Exhibit 2 a true and correct copy of the Order Granting Plaintiffs' Motion for a Preliminary Injunction in *John Doe G v. Dep't of Corrections*, No. 14-2-21109-1 SEA (King County Superior Court); Exhibit 3 a true and correct copy of the Order Granting Plaintiffs' Motion for a Preliminary Injunction in *John Doe G v. Dep't of Corrections*, No. 14-2-25433-4 SEA (King County Superior Court); as Exhibit 4, a true and correct copy of the Order Granting Plaintiffs' Motion for Preliminary Injunction in *John Doe L v. Pierce County*, No. 14-2-14293-1 (Pierce County Superior Court); and as Exhibit 5, a true and correct copy of the Order Granting Plaintiffs' Motion for Preliminary Injunction in *John Doe P v. Thurston County*, No. 15-2-00094-0 (Thurston County Superior Court).

3. I am also familiar with similar litigation in other counties. I attach to this declaration as Exhibit 6 a true and correct copy of the Order Granting Plaintiffs' Motion for a Permanent Injunction in *John Doe v. Benton County*, No. 13-2-02146-1 (Benton County Superior Court); and Exhibit 7, a true and correct copy of the Order Granting Temporary Injunctive Relief in *B.B., et al. v. Ken Irwin*, No. 13-2-04101-3 (Yakima Superior Court).
4. Ms. Zink has publicly declared that she believes every registered sex offender should be listed online. *See* Annie Andrews, Should there be a level 1 sex offender registry, KEPRTV.com (Aug. 9, 2013), attached as Exhibit 8.
5. Ms. Zink has already posted sex offender registration forms obtained from Franklin County and at least one Special Sex Offender Sentencing Alternative on a website that is available to the general public. True and correct copies of extracts from that website are attached as Exhibits 9 and 10.

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[1] These consolidated cases are currently on appeal before the Washington State Supreme Court (No. 90431-8). The Supreme Court has accepted review and will hear argument in the fall.

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6. Ms. Zink released additional sex offender registration information on the same website on February 24 and March 7, 2015. True and correct copies of extracts from that website are attached as Exhibits 11 and 12.

7. I attach to this declaration as Exhibit 13 a true and correct copy of the Declaration of Brad Meryhew; as Exhibit 14 a true and correct copy of the Declaration of the Washington Association for the Treatment of Sexual Abusers; as Exhibit 15 a true and correct copy of the Declaration of Maia Christopher of the Association for the Treatment of Sexual Abusers; as Exhibit 16 a true and correct copy of the Declaration of Nicole Pittman, a national expert on juvenile registration laws; as Exhibit 17 a true and correct copy of the Declaration of Jane Roe R; as Exhibit 18 a true and correct copy of the Declaration of John Clayton, the secretary of the Department of Social and Health Services in charge of the Juvenile Rehabilitation Administration; as Exhibit 19 a true and correct copy of the Declaration of John Doe P; as Exhibit 20 a true and correct copy of John Doe Q; as Exhibit 21 a true and correct copy of the Declaration of John Doe R; as Exhibit 22 a true and correct copy of the Declaration of John Doe S.

I declare under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct.

Dated this 19th day of June, 2015.

/s/ Vanessa T. Hernandez
Vanessa T. Hernandez, WSBA #42770

AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON FOUNDATION
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EXHIBIT 1

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

JOHN DOE A, a minor by and through his legal guardians Richard Roe and Jane Roe; and JOHN DOE B, a married man; as individuals and on behalf of others similarly situated;

Plaintiffs,

v.

WASHINGTON STATE PATROL, an agency of the State of Washington; and DONNA ZINK, a married woman,

Defendants.

JOHN DOE C, a minor by and through his legal guardians Richard Roe C and Jane Roe C; JOHN DOE D, a minor by and through his legal guardians Richard Roe D and Jane Roe D; JOHN DOE E; and JOHN DOE F; as individuals and on behalf of others similarly situated;

Plaintiffs,

v.

WASHINGTON ASSOCIATION OF SHERIFFS AND POLICE CHIEFS,

Defendant,

No. 13-2-41107-5 SEA

Consolidated with
No. 14-2-05984-1 SEA

ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND PERMANENT INJUNCTION

~~[AMENDED~~ PROPOSED]

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ORIGINAL

v.

DONNA ZINK, a married woman,

Requestor.

THIS MATTER came on for hearing before this Court upon Plaintiffs' Motion for Summary Judgment and Permanent Injunction ("Plaintiffs' Motion").

Having considered Plaintiffs' motion and all pleadings submitted in support of and in opposition to the motion, as well as the arguments of counsel for the parties, the Court enters the following findings of fact and conclusions of law:

FINDINGS OF FACT

1) Ms. Donna Zink, a resident of Mesa, Washington, submitted three requests for public records to Defendants. The first request, dated November 1, 2013 and modified November 20, 2013, requests a copy of the Washington State Patrol's Sex and Kidnapping Offender Database. The second request, dated November 28, 2013, seeks email correspondence between the Washington State Patrol and Benton County for a specific period. The records identified as responsive to this request include sex offender registration records including an extract of the Sex and Kidnapping Offender Database. The third request, dated January 23, 2014, seeks from the Washington Association of Sheriffs and Police Chiefs sex offender registration forms pertaining to offenders with last names beginning with the letter "A" and sex offender registration files pertaining to offenders with last names beginning with the letter "B."
2) The Requested Records (as defined in Plaintiffs' Motion for Summary Judgment and Preliminary Injunction) name or specifically pertain to the members of the Classes (as defined in the Court's orders dated April 21, 2014).

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3) The Requested Records are sex offender registration records, the public disclosure of which is governed by the exemption codified at RCW 4.24.550.

4) The Washington State Patrol (WSP) is a public agency as defined by the Public Records Act, RCW 42.56.010(1).

5) The Washington Association of Sheriffs and Police Chiefs (WASPC) is directed in RCW 4.24.550 to create and maintain a statewide registered kidnapping and sex offender web site. The sex offender registration forms and files requested by Ms. Zink and maintained by WASPC in accordance with RCW 4.24.550 are public records within the meaning of the Public Records Act.

6) Prior to the filings of the complaints in this consolidated case, both the WSP and WASPC indicated that they would release all Requested Records, including those pertaining to juvenile and adult offenders classified at risk level I and designated as in compliance with registration, without reference to the exemption contained at RCW 4.24.550. Both the WSP and WASPC have adopted a policy or practice that RCW 4.24.550 is not an exemption to the Public Records Act.

7) On December 9, 2013, this Court issued a Temporary Restraining Order, preventing the WSP from disseminating records or information pertaining to level I sex offenders pursuant to Ms. Zink's request submitted on November 1, 2013 and modified on November 20, 2013. On December 12, 2013, this Court issued a Preliminary Injunction preventing the WSP from disseminating records or information pertaining to level I sex offenders, except as permitted by RCW 4.24.550, pursuant to Ms. Donna Zink's Public Records Act request submitted on November 1, 2013 and modified on November 20, 2013.

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8) On February 27, 2014, this Court entered a temporary restraining order preventing WASPC from disclosing or disseminating any records or information pertaining to level I sex offenders, except as permitted by RCW 4.24.550.

9) On March 5, 2014, this Court entered an order consolidating the cases against the WSP and WASPC for trial.

10) Class members are level I sex offenders named in extracts of the WASPC and WSP sex offender registration databases. As such, the Requested Records specifically pertain to them. Level I offenders are those who, after assessment using actual risk-assessment instruments, are determined to have a low risk of sexual re-offense within the community at large.

11) There are no material facts in dispute. The primary question to be resolved in this action is whether the records are exempt, which is a question of law.

12) Plaintiffs submitted detailed declarations from the individual Plaintiffs and third parties, attesting to the harm caused by public disclosure of sex offender registration. The Court finds these declarations to be credible and compelling evidence of the irreparable harm that will result from "blanket" or generalized disclosure of sex offender registration records.

13) Plaintiffs also submitted declarations from experts (including Maia Christopher, Nicole Pittman, Brad Merryhew, and John Clayton), attesting to harm and the public interest in sex offender registration records. The Court finds these declarations to be credible and compelling evidence of the harm that will result from "blanket" or generalized disclosure of sex offender registration records and of the public's interest in limited and relevant disclosure of such records.

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14) The evidence submitted in this case establishes that sex offenders who are identified by public disclosure face an increased risk of physical violence, stigmatization, mental and emotional distress, and loss of economic opportunity. Sex offenders who are publicly identified on lists of registrants find it significantly more difficult to find employment and housing. Their families, sometimes including victims, face harassment and ostracism. "Blanket" or generalized release of the records and sex offender information of Class members would make it more difficult for them to safely integrate into their communities.

15) The evidence submitted in this case establishes that the public interest is served by targeted and limited disclosure of sex offender registration information. "Blanket" or generalized disclosure dilutes the efficacy of disclosures related to dangerous individuals and undermines the carefully crafted legislative scheme.

CONCLUSIONS OF LAW

16) A party seeking a permanent injunction under the Public Records Act must prove that (1) the record specifically pertains to that party; (2) an exemption applies; and (3) disclosure would not be in the public interest and would substantially and irreparably harm that party or a vital governmental function. RCW 42.56.540.

17) WASPC is subject to the Public Records Act for the purpose of responding to requests for public information concerning the registered kidnapping and sex offender website maintained by WASPC per RCW 4.24.550(5)(a). The WSP is a public agency as defined by the Public Records Act.

18) RCW 42.56.070(1) states that agencies shall make available "all public records, unless the record falls within the specific exemptions . . . this chapter, or *other statute which*

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exempts or prohibits disclosure of specific information or records" (emphasis added). An "other statute" need not explicitly reference the PRA in order to provide an exemption.

19) RCW 4.24.550 is an "other statute which exempts or prohibits disclosure" of sex offender registration records. The statute sets forth a comprehensive scheme for what information is to be provided regarding sex offenders, to whom it is provided, and under what circumstances.

20) The legislative history of RCW 4.24.550 clearly sets forth a legislative intention to limit release or disclosure of sex offender information to the general public.

21) RCW 4.24.550(2) states that, unless disclosure of sex offender registration information is specifically required under RCW 4.24.550(5), "the extent of the public disclosure of relevant and necessary information shall be rationally related to: (a) the level of risk posed by the offender to the community; (b) the locations where the offender resides, expects to resident, or is regularly found; and (c) the needs of the affected community members for information to enhance their individual and collective safety."

22) In *State v. Ward*, 123 Wn. 2d 488, 870 P.2d 295 (1994), the Supreme Court relied specifically on the limits on public disclosure of sex offender registration records in RCW 4.24.550 as a basis for upholding the constitutionality of the sex offender registration statutes.

23) Section 9 of RCW 4.24.550 indicates that the legislature did not intend to make registration information "confidential." This language does not mean that RCW 4.24.550 is not an exemption to the PRA. First, section 9 was in the statute in 1994

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when the Supreme Court expressly declared in *State v. Ward* that sex offender registration records are in most cases confidential. Second, section 9 references subsection (1), which authorizes release of "relevant and necessary" information. Section 9 therefore establishes that law enforcement agencies are not prohibited from disclosing sex offender records, but does not authorize "blanket" or generalized disclosure.

24) Generalized or "blanket" disclosure of the Requested Records, without reference to the exemption at RCW 4.24.550 would substantially and irreparably harm the Class. Sex offenders who are identified by public disclosure face an increased risk of physical violence, stigmatization, mental and emotional distress, and loss of economic opportunity. Sex offenders who are publicly identified on lists of registrants find it significantly more difficult to find employment and housing. Their families, sometimes including victims, face harassment and ostracism. Generalized release of the records and sex offender information of Class members would make it more difficult for them to safely integrate into their communities.

25) "Blanket" or generalized disclosure of the Requested Records would not be in the public interest. The legislature has carefully created a statute that ties the level of public disclosure of the level of risk posed by an individual offender. The Legislature's intent was clearly to limit disclosure to the general public to those circumstances presenting a threat to public safety.

26) "Blanket" or generalized disclosure of the names, exact residential addresses, and other information related to level I sex offenders would not advance public safety or governmental interest, and will undermine the efficacy of the current system. In

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particular, "blanket" or generalized disclosure would undermine the efficacy of targeted disclosure.

27) The members of the Classes have a clear legal and equitable right to enjoin the release of exempt records to the general public. They have a clear legal and equitable right to have the WSP and WASPC recognize the exemption contained in statute.

28) The members of the Classes have a well-grounded fear of immediate invasion of that right.

29) Plaintiffs have shown that release of the Requested Records or other WASPC or WSP sex offender registration records that name or specifically pertain to the members of the Classes would result in actual or substantial injury.

ORDER

The Court therefore ORDERS that Plaintiffs' Motion for Summary Judgment and Permanent Injunction is GRANTED as follows:

1) Declaratory judgment is entered providing that level I sex offender registration records are exempt from disclosure under RCW 42.56.070 pursuant to RCW 4.24.550. RCW 4.24.550 provides the exclusive mechanism for public disclosure of sex offender registration records.

2) The WSP and WASPC shall not make a "blanket" or generalized production of sex offender records of Class members in response to Ms. Zink's requests for public records (whether pending or made during the duration of this litigation (including any appeals)).

3) The WSP and WASPC may disclose "relevant and necessary" level I sex offender records in response to a request under RCW 4.24.550 by a member of the general

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public, after considering in good faith the offender's risk classification, the places where the offender resides or is expected to be found, and the need of the requestor to protect individual and community safety.

DATED this 15 day of 5, 2014.

The Honorable Jean Rietschel
Superior Court Judge

Presented By:

CORR CRONIN MICHELSON
BAUMGARDNER & PREECE LLP

s/ Steven W. Fogg
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Approved as to form, copy received:

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EXHIBIT 2

JUDGE ROGER ROGOFF

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

JOHN DOE G AND JOHN DOE H, et. al., Plaintiffs, v. DEPARTMENT OF CORRECTIONS, Defendants, v. DONNA ZINK, Requestor.	NO. 14-2-21109-1 SEA **ORDER ON MOTION FOR PRELIMINARY INJUNCTION**

THIS MATTER having come on regularly before the undersigned Judge of the King County Superior Court upon Plaintiff's Motion for Preliminary Injunction, and the Court having reviewed Plaintiff's Motion and all attached Declarations and Exhibits, and having reviewed Defendant's Response and all declarations and exhibits, and having reviewed the Requestor's Memorandum in Opposition to Motion and all declarations and exhibits, the Court hereby engages in the following analysis and enters the following order:

Judge Roger S. Rogoff
King County Superior Court, Dept. 47
516 3rd Avenue, W719
Seattle, WA 98104

BACKGROUND

On May 9, 2014, Donna Zink made a public records request from the Department of Corrections. Her request sought, "the notification form/letter that the department gives [to] sex offenders [who are released] from prison [and into] the community [who have last names] beginning with A, B, C, or D." Ms. Zink made the request pursuant to the Washington State Public Records Act. RCW 42.56, et. seq.

The Department of Corrections (hereinafter "DOC") agreed to release the records, and intended to initiate the records release on August 4, 2014. *See* Complaint at Paragraph 18. On July 30, 2014, Plaintiffs filed a lawsuit seeking to enjoin the release of these records, arguing that they are exempt from release and would cause irreparable harm to members of a specific class of people. *See* Complaint.

Plaintiffs immediately requested a Preliminary Injunction, which was to be heard before the undersigned Court at 8:30 a.m. on August 12, 2014. On July 31, 2014, Plaintiffs sought and received an *ex parte* Temporary Restraining Order, preventing DOC from releasing the requested records to Ms. Zink until the hearing on Preliminary Injunction. *See* Temporary Restraining Order, dated 7/31/14. The Temporary Restraining Order was extended to August 22, 2014, preserving the status quo so that this Court could make a decision on the current motion.

Subsequently, plaintiffs filed three motions: 1) A Motion to Proceed via Pseudonym; 2) A Motion to Certify as a Class Action; and 3) The Motion for Preliminary Injunction. The Court granted the first two motions, and now addresses the third.

ANALYSIS

Standard for Preliminary Injunction

It is within the Court's equitable discretion to grant or deny a motion for preliminary injunction. Rabon v. City of Seattle, 135 Wash.2d 278, 284, 957 P.2d 621 (1998). The standard of the appellate court's review will be whether or not this court abused its discretion. Id. Thus, this Court must make its decision on the Motion for Preliminary Injunction based upon tenable grounds, and the decision must not be manifestly unreasonable or arbitrary. Id.

A party seeking relief through a preliminary injunction must show:

1. A clear legal or equitable right;
2. A well-grounded fear of immediate invasion of that right;
3. That the acts complained of have or will result in actual and substantial injury;
4. That there is no adequate remedy at law; and
5. The Court must balance the equities

Id.; Tyler Pipe Indus., Inc. v. Department of Revenue, 96 Wash.2d 785, 792, 638 P.2d 1213 (1982); Kucera v. Department of Transportation, 140 Wn.2d 200, 209, 995 P.2d 63 (2000). The Court must evaluate the above criteria in light of equity, including the balancing of the relative interests of the parties and the interests of the public, if appropriate. Id.

The Court notes that the Rabon court's decision -- that an order granting preliminary injunction on a "purely legal issue" is tantamount to a final decision on the merits – conflicts significantly with the notion of a court exercising its discretion in an equitable manner by balancing all of the relevant factors.

In this case, neither DOC nor Ms. Zink seriously claims that factors two, three and four are in their favor. It is clear in this case that these factors favor Plaintiff's position. There is no remedy at law for Plaintiffs. Given DOC's intent to produce the requested documents absent a court order, if Plaintiffs have a legal/equitable right, then they have a well-grounded fear of an immediate invasion of that right. The Court further finds that, should DOC provide the records to Ms. Zink, Plaintiffs will likely suffer actual and substantial injury.

Thus, the only contested question the Court faces is whether Plaintiffs are likely to prevail on the merits in this matter. In deciding whether a party has a clear legal or equitable right, the court examines the likelihood that the moving party will prevail on the merits. Rabon, supra at 284-5, citing Washington Fed'n of State Employees, Council 28 v. State, 99 Wash.2d 878, 888, 665 P.2d 1337 (1983). The Court should not grant an injunction in a doubtful case. Id.

The Plaintiff here has argued, pursuant to Rabon, that where the essential facts are not in dispute and the only issue is the likelihood that plaintiff will prevail on the merits "the trial court necessarily decides the merits of the case." Rabon, at 300–01. However, Plaintiff fails to take into consideration the appellate posture of the Rabon case. In that matter, the trial

Judge Roger S. Rogoff
King County Superior Court, Dept. 47
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Court made clear that it believed it HAD decided the merits of the case, and it was this particular finding that Mr. Rabon disputed. Rabon appealed the trial court's decision and argued to the appellate court that the Court's decision on preliminary injunction did not constitute a ruling on the merits.

CR 65 provides that, before or after commencement of a hearing on a request for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing on the preliminary injunction. Rabon, at 285, fn. 2. Absent such consolidation, or a stipulation of the parties, the court cannot enter an order disposing of the case on the merits. Id., citing, Turner v. City of Walla Walla, 10 Wash.App. 401, 406, 517 P.2d 985 (1974). Rather than holding that the trial court MUST adjudicate the merits of the case at the preliminary injunction stage, it rather held that the trial court ***did not err*** by essentially adjudicating the ultimate merits of the suit. Id. The Court made clear however, that "in accord with well-settled principles, a court is ***not*** to adjudicate the ultimate merits of the case." Id (Emphasis added).

Thus, the Court will address the merits of the underlying lawsuit insofar as the Court can determine whether a legal or equitable right exists. The Court will then balance all of the Rabon factors. This decision should not be confused with any decision this Court may make in the future on the ultimate merits of the case.

The Public Records Act (PRA)

The PRA is a strongly worded mandate for broad disclosure of public records. *See* RCW 42.56.070. Courts should liberally construe the act, and narrowly construe its

exemptions in favor of disclosure. Soter v. Cowles Pub. Co., 162 Wn.2d 716, 731 (2007). The burden of proof is on the party seeking to prevent disclosure to show that an exemption applies. Limstrom v. Ladenburg, 136 Wn.2d 595, 612, 963 P.2d 869 (1998); RCW 42.56.540, .550(1).

Pursuant to the PRA, each government agency "shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (6) of [the PRA], or other statute which exempts or prohibits disclosure of specific information or records." RCW 42.56.070. Moreover, "to the extent required to prevent an unreasonable invasion of personal privacy interests," an agency shall delete identifying details in a manner consistent with [the PRA] when it makes available or publishes any public record. RCW 42.56.070(1). However, in each case, the justification for the deletion shall be explained fully in writing. RCW 42.56.070(1).

An invasion of privacy occurs when disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public. RCW 42.56.050.

The Sex Offender Registration Statute

Plaintiffs in this case are people previously convicted of sex offenses, released from custody, and subsequently designated as Level I Registered Sex Offenders. Some of these offenders are no longer required to register. Some are required to register. Level I Sex Offenders are those who, after assessment using actual risk assessment instruments, are determined to have a low risk of sexual re-offense within the community at large.

Plaintiffs submitted a significant number of declarations from experts in the field of sex offender treatment attesting to the harm that will result in generalized disclosure of sex offender registration records for all Level I sex offenders. The Court finds these declarations credible insofar as they provide *potential* harms that could befall these offenders.

The offenders identified by public disclosure face an increased risk of physical violence, mental distress, and loss of employment opportunities. Sex offenders identified on public lists of registrants have significantly more difficulty finding housing. Their families, which oftentimes include their victims, face harassment. Blanket release of sex offender registration information for this class of offenders would make it more difficult for them to integrate into society. Moreover, this Court finds that release of information that will cause upheaval in many of these offenders' lives will negatively impact the course of their treatment and progress.

On the other hand, sex offenders pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and protection of the public from sex offenders is a paramount governmental interest. King v. Riveland, 125 Wn.2d 500, 513, 886 P.2d 160 (1994). Moreover, the penal and mental health components of our justice system are largely hidden from public view and that lack of information from either may result in failure of both systems to meet this paramount concern of public safety. Id. Persons found to have committed a sex offense have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government. Id.

It is this state's policy as expressed in RCW 4.24.550 to require the exchange of relevant information about sexual predators ***among public agencies and officials*** and to authorize the release of ***necessary and relevant information*** about sexual predators to members of the general public. Id. DOC argues that, because RCW 4.24.550 states that, "nothing in this section implies that information regarding [sex offenders] is confidential," it cannot constitute an exemption to the PRA. See Response Brief of DOC, at 4.

However, our State Supreme Court has described the sex offender registration statute as a legislative "pronouncement [evincing] a clear regulatory intent to limit the exchange of relevant information to the general public to those circumstances which present a threat to public safety." State v. Ward, 123 Wash.2d 488, 502, 869 P.2d 1062 (1994). The Legislature clearly intended public agencies to disseminate warnings to the public "under limited circumstances." Id., at 502. The court stated that, under the statute, in many cases, both the registrant information and the fact of registration remain "confidential." Id.

For those cases which merit disclosure, the statute requires an agency to have some evidence that the offender poses a threat to the public or, in other words, some evidence of dangerousness in the future. Id., at 503. The release of the registrant information must be "necessary for public protection". Id., *referencing* RCW 4.24.550(1).

The Supreme Court held that a public agency must have some evidence of an offender's future dangerousness, likelihood of re-offense, or threat to the community, to

justify disclosure to the public in a given case. Id.[1] This statutory limit ensures that disclosure occurs to prevent future harm, not to punish past offenses.

Moreover, non-disclosure under the PRA is not synonymous with "confidential." Rather, the statute sets out a mandate for disclosure, along with a series of exemptions to disclosure. Those documents described within those exemptions are not necessarily "confidential." Rather, they are simply not available in the manner and at the time they were requested under the PRA. For example, in Newman v. King County, 133 Wn.2d 565 (1997), the Supreme Court found that law enforcement reports in an open, ongoing investigation were protected from disclosure under the PRA, yet in Sargent v. Seattle Police Department, 179 Wash.2d 376, 314 P.3d 1093 (2013) those same files did not fall within the exemption once the police referred the case to the prosecutor's office. Thus, the exemption to release of requested records under the PRA does not necessarily equate to confidentiality.

Based upon a combination of the language in the statute and the holding in Ward, this Court concludes that RCW 4.24.550 is an "other statute which exempts or prohibits disclosure" of sex offender registration records. RCW 4.24.550 creates a thoughtful statutory scheme for what sex offender records public agencies should and should not release to either governmental agencies or the public. The legislature considered the balancing of the danger to the public against the harm to the offenders in authorizing the disclosures described in the statute.

---

[1] This Court notes that, contrary to DOC's interpretation of RCW 4.24.550 as a statute of community notification as opposed to a "disclosure statute, the State Supreme Court couched its holding in terms of "disclosure," rather than "notification."

This Court concludes that it is reasonably likely that Plaintiffs will prevail. Moreover, given that the same legal issue has been raised in other Courts in this State, and those matters are on appeal, the Court has a greater reason to maintain the status quo pending the outcome of those cases and this one. The Court further concludes that Plaintiffs have a well-grounded fear of immediate invasion of that right and that any violation of that right will result in actual and substantial injury. There is no adequate remedy at law and, in balancing the equities, the Court is convinced that a preliminary injunction will allow the parties a full and fair hearing without fear of harm.

ORDER

IT IS HEREBY ORDERED THAT the Plaintiff's Motion for Preliminary Injunction is GRANTED. The DOC shall not release any records pursuant to Ms. Zink's request until further order of this Court.

Dated this 21st day of August, 2014.

JUDGE ROGER ROGOFF

Judge Roger S. Rogoff
King County Superior Court, Dept. 47
516 3rd Avenue, W719
Seattle, WA 98104

EXHIBIT 3

THE HONORABLE BARBARA LINDE
Noted for Hearing: October 3, 2014, at 10:00 a.m.
Oral Argument Requested

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

JOHN DOE G, JOHN DOE I and JOHN DOE J, as individuals and on behalf of others similarly situated,

Plaintiffs,

v.

DEPARTMENT OF CORRECTIONS, STATE OF WASHINGTON,

Defendant,

DONNA ZINK, a married woman,

Requestor.

No. 14-2-25433-4 SEA

~~[PROPOSED]~~ ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

THIS MATTER came before the Court on Plaintiffs John Doe G's, John Doe I's and John Doe J's Motion for Preliminary Injunction. Plaintiffs made the Motion as individuals and on behalf of a proposed class of others similarly situated ("Plaintiffs").

Having considered Plaintiffs' Motion and all pleadings submitted in support of and in opposition to the Motion, the requirements of CR 65, as well as the arguments of counsel for the parties, the Court rules as follows:

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I. FINDINGS OF FACT

1. On or about July 28, 2014, a member of the public, Donna Zink, submitted a public records request to the Department of Corrections (DOC). Ms. Zink requested from DOC copies of all "SSOSA evaluations, [Special Sex Offender Disposition Alternative] evaluations, and victim impact statements related to those convicted of sex offenses held, maintained, in the possession of, or owned by the Washington State Department of Corrections from January 1, 1990 to the present."

2. SSOSA evaluations are made by certified health care providers to determine an offender's amenability to treatment and eligibility for a Special Sex Offender Sentencing Alternative (SSOSA).

3. Ms. Zink's request includes SSOSA evaluations for Level I sex offenders the who are in compliance with their registration or who have been relieved of the duty to register.

4. After a hearing in which DOC and Ms. Zink appeared, Plaintiffs were granted a Temporary Restraining Order on September 17, 2014.

5. The Evaluations include detailed psychological, medical, and sexual information related to hundreds of level I offenders. For example, certified treatment providers must include in the Evaluations detailed information about Class members' mental and physical health, familial histories, substance abuse and sexual histories. WAC 246-930-320. The certified health care professionals who conduct the Evaluations also make a finding of amenability to treatment and, if applicable, devise a proposed treatment plan. *Id.*

6. Plaintiffs John Doe G, John Doe I and John Doe J are level I offenders in compliance with registration or relieved of the duty to register. They each received SSOSA evaluations after 1990 and were supervised by DOC. Plaintiffs are named in the responsive

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records. As Level I offenders, the Plaintiffs have not been determined to have a high risk of reoffending

7. There is no evidence indicating any specific threat towards Ms. Zink.

8. DOC did not notify individuals named in the Evaluations about the public records request or the impending release of the Evaluations. DOC has indicated that it will make a blanket release of the Evaluations and will not conduct the individualized determinations required for permissive disclosure of Level I sex offender records pursuant to the comprehensive statutory scheme of RCW 4.24.550.

9. Plaintiffs submitted detailed declarations, from the individual Plaintiffs and third parties, attesting to the harm caused by public disclosure of the SSOSA Evaluations. The Court finds these declarations to be credible and compelling evidence of the potential irreparable harm that will result from blanket or generalized disclosure of the Evaluations.

10. Plaintiffs submitted declarations from experts, including Brad Merryhew, Amy Muth, and the Washington Association for the Treatment of Sexual Abusers. These declarations attested to the harm from disclosure and the public interest in the maintaining confidentiality of the SSOSA Evaluations. The Court finds these declarations to be credible and compelling evidence of the potential harm that will result from blanket or generalized disclosure of the Evaluations and of the public's interest in limited and relevant disclosure of such records.

11. The psychologists, social workers, and other professionals who provide treatment to sexual offenders, and who by law are authorized to perform SSOSA evaluations, are licensed health care practitioners. RCW 18.15; WAC 246-930-020, 030, 040 (outlining requirements for sex offender treatment providers). SSOSA treatment is specialized mental health treatment.

1/(a) In creating the SSOSA alternative the legislature recognized that mental or behavioral health treatment is appropriate for certain types of sexual offenders. 5

SSOSA evaluations pertain and are maintained as part of a treatment process. (B)

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12. The evidence submitted indicates that sex offenders who are identified to the public through a blanket public disclosure face an increased risk of physical violence, stigmatization, mental and emotional distress, and loss of economic opportunity. If Level I sex offenders' SSOSA evaluations are released by DOC, they will find it significantly more difficult to find employment and housing. Their families, sometimes including victims, face harassment and criticism. Blanket or generalized release of the Evaluations of Class members would make it more difficult for them to safely integrate into their communities. Generalized disclosure could also deter individuals from seeking treatment or providing sensitive information necessary for effective treatment. Disclosure would thus undermine the legislature's purpose in creating the SSOSA, and jeopardize the success of those who receive SSOSAs.

II. CONCLUSIONS OF LAW

13. A party seeking a preliminary injunction under the Public Records Act must prove that (1) the record specifically pertains to the party; (2) an exemption applies; (3) disclosure would not be in the public interest and would substantially and irreparably harm that party or a vital governmental function. RCW 42.56.540.

14. DOC is subject to the Public Records Act for the purpose of responding to requests for public information concerning sex offender registration information. DOC is a public agency as defined in the PRA.

15. Washington's PRA requires agencies to produce public records upon request "unless the record falls within the specific exemptions of . . . [the PRA] or other statute which exempts or prohibits disclosure of specific information or records." RCW 42.56.070(1). An "other statute" need not explicitly reference the PRA in order to provide an exemption.

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16. Plaintiffs have clear legal and equitable right to enjoin the release of exempt records to the general public, as the disclosure would cause immediate and irreparable harm and would not be in the public interest. Plaintiffs have shown a likelihood of prevailing on the merits of their claims that:

a. Disclosure of the SSOSA evaluations is governed by RCW 71.05.445, which makes them confidential except as provided by RCW 72.09.585, and that RCW 72.09.585 does not permit generalized disclosure in response to this request.

b. Disclosure of the SSOSA evaluations is governed by RCW 70.02, which applies to health care records.

~~c. RCW 4.24.550 is an "other statute" which exempts disclosure of Level I sex offender SSOSA Evaluations under the PRA. Release of information under the PRA pertaining to sex offenders is determined under the analysis set forth in RCW 4.24.550.~~

17. Plaintiffs have also shown a likelihood of prevailing on their claims that generalized or blanket disclosure of the Evaluations, without reference to the exemptions at RCW 71.05.445, RCW 70.02, ~~or RCW 4.24.550~~, would substantially and irreparably harm the proposed Class. Sex offenders who are identified by public disclosures face an increased risk of mental, emotional, and economic harm associated with the stigma of the disclosure, and the potential physical harm resulting from homelessness and/or attacks on their person that may follow public release of this information.

18. Plaintiffs have shown a likelihood of prevailing on their claim that a generalized or blanket disclosure of all Level I sex offender SSOSA Evaluations would also not be in the public interest because it would undermine the public policy of confidentiality in mental health records, fail to comport with the balancing test established by Washington's legislature for the

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disclosure of sex offender registration information, and because it dilutes the value of the classification system.

19. Plaintiffs have a clear legal and equitable right to have DOC recognize the exemption contained in the statute.

20. Plaintiffs have a well-grounded fear of immediate invasion of their rights.

21. Plaintiffs' ability to seek injunctive relief would be meaningless if the records were released prior to a determination on the merits.

22. Plaintiffs have shown that DOC's actions would result in substantial injury.

The Court therefore ORDERS that Plaintiffs' Motion for Preliminary Injunction is GRANTED; DOC shall not disclose or disseminate any SSOSA Evaluations pertaining to Level I sex offenders pursuant to the request by Ms. Donna Zink.

DONE IN OPEN COURT this 3 day of October, 2014.

By _____
THE HONORABLE BARBARA LINDE

Presented by:

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AMERICAN CIVIL LIBERTIES UNION
OF WASHINGTON FOUNDATION

By /s/Sarah A. Dunne
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THE HONORABLE BARBARA LINDE
Noted for Hearing: October 3, 2014 at 10:00 am

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

JOHN DOE G, JOHN DOE H, and JOHN DOE J as individuals and on behalf of others similarly situated,

Plaintiffs,

v.

DEPARTMENT OF CORRECTIONS,

Defendant,

v.

DONNA ZINK, a married woman,

Requestor.

No. 14-2-25433-4

[~~PROPOSED~~] ORDER GRANTING MOTION FOR PERMISSION TO PROCEED IN PSEUDONYM

This Motion having come before the undersigned court on Plaintiffs' Motion for Permission to Proceed in Pseudonym, and the Court having reviewed the pleadings and deeming itself fully advised in the premises, hereby FINDS:

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1) Typically, civil plaintiffs must file suit in their names. Nevertheless, Plaintiffs may be allowed to proceed under a pseudonym if the need for anonymity outweighs the public interest in access to their identities.

2) Plaintiffs seek to exercise their right, under the Public Records Act ("PRA"), to enjoin release of information pertaining to them which they contend is exempt from the PRA. Forcing Plaintiffs to disclose their identities to bring this action would eviscerate their ability to seek relief.

3) Plaintiffs have demonstrated a significant risk of physical, mental, economic, and emotional harm if their identities are disclosed. Plaintiffs also allege that the records at issue contain sensitive mental health information, and that their privacy would be violated by disclosure of this information to the general public.

4) The public's right to access the proceedings will not be compromised apart for from its ability to ascertain the names of individual Plaintiffs. The names of individual Plaintiffs have little bearing on the public's interest in the dispute or its resolution.

5) Defendant will not be prejudiced if Plaintiffs proceed in pseudonym.

6) Plaintiffs' interest in proceeding anonymously outweighs the public interest in knowing their names.

7) There are no reasonably viable alternatives to address these concerns

The Court therefore GRANTS Plaintiffs' Motion for Permission to Proceed in Pseudonym and ORDERS that Plaintiffs be allowed to proceed in pseudonym throughout the pendency of this action., or until further order of the Court.

DATED this 31st day of October, 2014.

The Honorable Barbara Linde

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SEATTLE, WA 98164

Presented by:

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Attorneys for Plaintiffs

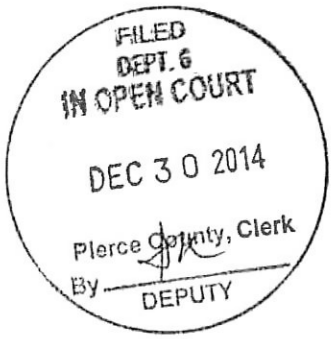
Copy Received, Approved as to Form:

ROBERT W. FERGUSON
Attorney General

_____
Timothy Fuelner, WSBA # 45396
Attorney for Defendant Department of Corrections

_____
Donna Zink, pro-se requestor

EXHIBIT 4



SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

JOHN DOE L, JOHN DOE M; JOHN DOE N; and JOHN DOE O, as individuals and on behalf of others similarly situated;

Plaintiffs,

v.

PIERCE COUNTY,

Defendant,

v.

DONNA ZINK, a married woman,

Requestor.

NO. 14-2-14293-1

[redacted] ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

THIS MATTER came on for hearing before this Court upon John Doe L, John Doe M, John Doe N, and John Doe O as individuals and on behalf of others similarly situated (collectively Plaintiffs') Motion for Preliminary Injunction.

Having considered Plaintiffs' motion and all pleadings submitted in support of and in opposition to the motion, the requirements of CR 65 and RCW 42.56.540, as well as arguments of counsel for the parties, the Court rules as follows.

I. FINDINGS OF FACT

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5. Pierce County has stated that absent a court order it will release the Requested Records.

6. There is no evidence indicating any specific threat to Ms. Zink. Neither is there any evidence indicating that Ms. Zink has a relationship with any of the Plaintiffs.

7. The State of Washington has an established policy of restricting the disclosure of health care information because the release "may do significant harm to a patient's interests in privacy, health care or other interest." RCW 70.02.005.

8. Plaintiffs submitted detailed declarations, from the individual Plaintiffs and third parties, attesting to the harm caused by public disclosure of the Requested Records. The Court finds these declarations to be credible and compelling evidence of the potential irreparable harm that will result from blanket or generalized disclosure of the Requested Records.

9. Plaintiffs submitted declarations from experts, including John Clayton, Brad Meryhew, Nicole Pittman, Dan Knoepfler, and the Washington Association for the Treatment of Sex Abusers. These declarations attested to the harm from disclosure and the public interest in maintaining the confidentiality of the Requested Records. The Court finds these declarations to be credible and compelling evidence of the potential irreparable harm that will result from blanket or generalized disclosure of the Requested Records.

10. Plaintiffs submitted undisputed evidence that SSOSA and SSODA evaluations are mental health records.

11. The evidence submitted indicates that sex offenders who are identified to the public through a blanket public disclosure face mental and emotional damages associated with the stigma of the disclosure, and may face physical violence. If

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Defendants release the Requested Records for Level I sex offenders, the Level I sex offenders will find it significantly more difficult to find employment and housing. Their families, sometimes including the victims, face harassment and criticism. Blanket or generalized release of the Requested Records of Class members would make it more difficult for them to safely integrate into their communities, and might deter individuals from seeking treatment or providing sensitive information for effective treatment. Disclosure would thus undermine the legislature's purpose in creating the SSOSA, and jeopardize the success of those who receive SSOSAs.

II. CONCLUSIONS OF LAW

1. A party seeking an injunction under the PRA must prove that: (1) the record specifically pertains to the party; (2) the exemption applies; (3) disclosure would not be in the public interest and would substantially and irreparably harm that party of a vital government function. RCW 42.56.540.

2. Defendant is subject to the PRA.

3. Washington's PRA requires agencies to produce public records upon request "unless the record falls within the specific exemptions of [the PRA], or any other statute which exempts or prohibits disclosure of specific information or records." *See* RCW 42.56.070 (emphases added).

4. The requested records fall within specific exemptions under RCW 4.24.550, 70.02, and 13.50.050 and examination would clearly not be in the public interest and the disclosure would substantially and irreparably damage the plaintiffs.

a. Disclosure of the SSOSA and SSODA evaluations is governed by Chapter 70.02 RCW, which makes them confidential except as provided under that Chapter, and that Chapter 70.02 RCW does not permit generalized disclosure in response to Ms. Zink's requests;

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b. Chapter 70.02 RCW is an "other statute" which exempts disclosure of sex offender SSOSA evaluations under the PRA;

c. Disclosure of SSODA evaluations is governed by Chapter 13.50 RCW, which makes them confidential as provided under that Chapter, and that Chapter 13.50 RCW does not permit generalized disclosure in response to Ms. Zink's requests;

d. Chapter 13.50 RCW is an "other statute" which exempts disclosure of sex offender SSOSA evaluations under the PRA;

e. Disclosure of the sex offender registration information is governed by RCW 4.24.550, which does not permit generalized disclosure in response to Ms. Zink's requests; and

f. RCW 4.24.550 is an "other statute" which exempts disclosure of sex offender registration information under the PRA.

5. Plaintiffs have shown a likelihood of prevailing on their claims that generalized or blanket release of the Requested Records, without reference to the exemptions at Chapter 70.02 RCW, RCW 13.50, or RCW 4.24.550, would substantially and irreparably harm the proposed Class. Sex offenders who are identified by public disclosures face an increased risk of mental, emotional, and economic harm associated with the stigma of the disclosure, and the potential physical harm resulting from homelessness and/or attacks on their person that may follow public release of this information.

6. Plaintiffs have shown a likelihood of prevailing on their claim that a generalized or blanket disclosure of the Requested Records would also not be in the public interest because it would undermine the public policy of confidentiality in mental health records and confidentiality in juvenile offense records, because it would fail to comport with the balancing test established by Washington's legislature for the disclosure

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of sex offender registration information and health records, and because it dilutes the value of the sex offender classification system.

7. Plaintiffs have a clear legal and equitable right to have Defendants recognize the exemptions contained in the statutes.

8. Plaintiffs have a well-grounded fear of immediate invasion of their rights.

9. Plaintiffs' ability to seek injunctive relief would be meaningless if the records were released prior to determination on the merits.

10. Plaintiffs have shown that Defendants' actions would result in substantial injury.

The Court therefore ORDERS that Plaintiffs' Motion for Preliminary Injunction is GRANTED; the Defendant shall not disclose or disseminate any records or information pertaining to Level I sex offenders to any member of the general public, ~~except as permitted by RCW 4.24.550, RCW 13.50, and Chapter 70.02 RCW,~~ or pursuant to the request by Ms. Donna Zink or any comparable Public Records Act request. This injunction shall stay in effect until further order. This injunction shall stay in effect until this matter is ultimately resolved by trial or summary judgment.

DATED this 30th day of December, 2014.

FILED
DEPT. 6
IN OPEN COURT
DEC 30 2014
Pierce County, Clerk
By _____
DEPUTY

THE HONORABLE JACK NEVIN

This Order does not apply to Victim Impact Statements and Judgment and Sentences.

[Proposed] Order Granting Plaintiffs' Motion for Preliminary Injunction - 6 of 7
[100099601]

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Presented by:

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AND
ACLU OF WASHINGTON FOUNDATION

By: _____ WSBA 44767 FOR Vanessa Hernandez
Sarah Dunne, WSBA No. 34869
Vanessa Hernandez, WSBA No. 42770
Attorneys for Plaintiff

PIERCE COUNTY PROSECUTOR OFFICE

By: _____
Michelle Luna-Green, WSBA No. 27088
Michael Sommerfeld, WSBA No. 24009
Attorney for Defendant Pierce County

_____
Donna Zink, Pro Se
Jeff Zink, Pro Se

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EXHIBIT 5

☐ EXPEDITE
☐ Hearing is set:

Date: 1/23/15
Time: 9:00 a.m.
Judge/Calendar: CAROL MURPHY

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

JOHN DOE P; JOHN DOE Q; JOHN DOE R; and JOHN DOE S, as individuals and on behalf of others similarly situated.

Plaintiffs

vs.

THURSTON COUNTY, a municipal organization and its departments; the THURSTON COUNTY PROSECUTING ATTORNEY and THURSTON COUNTY SHERIFF,

Defendants

vs

DONNA ZINK, a married woman,

Requestor.

NO. 15-2-00094-0

CM
~~[PROPOSED]~~ ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

THIS MATTER came on for hearing before this Court upon John Doe P, John Doe Q, John Doe R, and John Doe S as individuals and on behalf of others similarly situated (collectively Plaintiffs') Motion for Preliminary Injunction.

Having considered Plaintiffs' motion and all pleadings submitted in support of and in opposition to the motion, the requirements of CR 65 and RCW 42.56.540, as well as arguments of counsel for the parties, the Court rules as follows.

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I. FINDINGS OF FACT

1. On October 3, 2014, Ms. Dona Zink, a member of the public, sent a Public Records Act (PRA) request to Thurston County seeking the following:

- SSOSA evaluation;
- SSODA evaluations;
- Victim Impact Statements for all sex offenders;
- Registration Forms of all sex offenders registered in Thurston County; and
- List and/or Data Base of all registered sex offenders registered in Thurston County.

(collectively "Requested Records").

2. The Requested Records include information regarding all level I sex offenders registered in Thurston County, and all those who received a SSOSA or SSODA evaluation. The Requested Records include information regarding level I sex offenders who are in compliance with their registration or relieved from registration requirements.

3. SSOSA and SSODA evaluations require the offender to disclose highly sensitive personal and medical information but are also an essential step for any defendant who hopes to participate in court-ordered specialized sex offender treatment. SSOSA and SSODA community-based treatment has been recognized for successfully identifying and treating offenders. The evaluations are conducted by certified mental health professionals.

4. Plaintiffs John Doe P, John Doe Q, John Doe R, and John Doe S are level I sex offenders who are or were compliant with their registration for all required times. As level I sex offenders who are either in compliance with registration or relieved from registration requirements, their names and identifying information are not published on the state website of registered offenders and they are not subject to broad community notification. Plaintiffs are named in the Requested Records. As level I offenders, Plaintiffs have not been determined to have a high risk of reoffending.

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5. Thurston County has stated that absent a court order it will release the Requested Records.

6. There is no evidence indicating any specific threat to Ms. Zink. Neither is there any evidence indicating that Ms. Zink has a relationship with any of the Plaintiffs.

7. The State of Washington has an established policy of restricting the disclosure of health care information because the release "may do significant harm to a patient's interests in privacy, health care or other interest." RCW 70.02.005.

8. Plaintiffs submitted detailed declarations, from the individual Plaintiffs and third parties, attesting to the harm caused by public disclosure of the Requested Records. The Court finds these declarations to be credible and compelling evidence of the potential irreparable harm that will result from blanket or generalized disclosure of the Requested Records.

9. Plaintiffs submitted declarations from experts, including John Clayton, Brad Meryhew, Nicole Pittman, Dan Knoepfler, and the Washington Association for the Treatment of Sex Abusers. These declarations attested to the harm from disclosure and the public interest in maintaining the confidentiality of the Requested Records. The Court finds these declarations to be credible and compelling evidence of the potential irreparable harm that will result from blanket or generalized disclosure of the Requested Records.

10. Plaintiffs submitted undisputed evidence that SSOSA and SSODA evaluations are mental health records.

11. The evidence submitted indicates that sex offenders who are identified to the public through a blanket public disclosure face mental and emotional damages associated with the stigma of the disclosure, and may face physical violence. If

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CM

Defendants release the Requested Records for level I sex offenders, the level I sex offenders will find it significantly more difficult to find employment and housing. Their families, sometimes including the victims, face harassment and criticism. Blanket or generalized release of the Requested Records of Class members would make it more difficult for them to safely integrate into their communities, and might deter individuals from seeking treatment or providing sensitive information for effective treatment. Disclosure would thus undermine the legislature's purpose in creating the SSOSA, and jeopardize the success of those who receive SSOSAs.

II. CONCLUSIONS OF LAW

CM

Plaintiffs have shown a likelihood of prevailing on the merits of their claims that:

1. A party seeking an injunction under the PRA must prove that: (1) the record specifically pertains to the party; (2) the exemption applies; (3) disclosure would not be in the public interest and would substantially and irreparably harm that party of a vital government function. RCW 42.56.540.

2. Defendant is subject to the PRA.

3. Washington's PRA requires agencies to produce public records upon request "unless the record falls within the specific exemptions of [the PRA], or any other statute which exempts or prohibits disclosure of specific information or records." *See* RCW 42.56.070 (emphases added).

4. The requested records fall within specific exemptions under RCW 4.24.550, 70.02, and 13.50.050 and examination would clearly not be in the public interest and the disclosure would substantially and irreparably damage the plaintiffs.

a. Disclosure of the SSOSA and SSODA evaluations is governed by Chapter 70.02 RCW, which makes them confidential except as provided under that Chapter, and that Chapter 70.02 RCW does not permit generalized disclosure in response to Ms. Zink's requests;

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b. Chapter 70.02 RCW is an "other statute" which exempts disclosure of sex offender SSOSA evaluations under the PRA;

c. Disclosure of SSODA evaluations is governed by Chapter 13.50 RCW, which makes them confidential as provided under that Chapter, and that Chapter 13.50 RCW does not permit generalized disclosure in response to Ms. Zink's requests;

d. Chapter 13.50 RCW is an "other statute" which exempts disclosure of sex offender SSOSA evaluations under the PRA;

e. Disclosure of the sex offender registration information is governed by RCW 4.24.550, which does not permit generalized disclosure in response to Ms. Zink's requests; and

f. RCW 4.24.550 is an "other statute" which exempts disclosure of sex offender registration information under the PRA.

5. Plaintiffs have shown a likelihood of prevailing on their claims that generalized or blanket release of the Requested Records, without reference to the exemptions at Chapter 70.02 RCW, RCW 13.50, or RCW 4.24.550, would substantially and irreparably harm the proposed Class. Sex offenders who are identified by public disclosures face an increased risk of mental, emotional, and economic harm associated with the stigma of the disclosure, and the potential physical harm resulting from homelessness and/or attacks on their person that may follow public release of this information.

6. Plaintiffs have shown a likelihood of prevailing on their claim that a generalized or blanket disclosure of the Requested Records would also not be in the public interest because it would undermine the public policy of confidentiality in mental health records and confidentiality in juvenile offense records, because it would fail to comport with the balancing test established by Washington's legislature for the disclosure of sex offender registration information and health records, and because it dilutes the value of the sex offender classification system.

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7. Plaintiffs have a clear legal and equitable right to have Defendants recognize the exemptions contained in the statutes.

8. Plaintiffs have a well-grounded fear of immediate invasion of their rights.

9. Plaintiffs' ability to seek injunctive relief would be meaningless if the records were released prior to determination on the merits.

10. Plaintiffs have shown that Defendants' actions would result in substantial injury.

THEREFORE IT IS ORDERED that Plaintiffs' motion for a preliminary injunction is GRANTED. The Defendants shall not disclose or disseminate any records or information pertaining to ~~compliant~~ compliant with or relieved of the duty to register level I sex offenders, except victim impact statements to ~~any member of the general public or pursuant to the request by~~ Ms. Donna Zink or any comparable Public Records Act request by her unless by further Court order. This preliminary injunction shall stay in effect until this matter is ultimately resolved by trial or summary judgment.

DATED this 23rd day of January, 2015.

Carol Murphy
JUDGE CAROL MURPHY

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By: _____
Sarah Dunne, WSBA No. 34869
Vanessa Hernandez, WSBA No. 42770
Attorneys for Plaintiff

THUSTON COUNTY PROSECUTOR OFFICE

By: _____
John C. Skinder, WSBA 26224
Attorney for Defendant Thurston County

_____
Donna Zink, Pro Se
Jeff Zink, Pro Se

LAW OFFICES
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EXHIBIT 6

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
COUNTY OF BENTON

JOHN DOE,

Plaintiff,

vs.

BENTON COUNTY, a municipal corporation in the State of Washington; and DONNA ZINK and JOHN DOE ZINK, husband and wife,

Defendants.

Cause No. 13-2-02146-1

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER REGARDING MOTION FOR PERMANENT INJUNCTION

THIS MATTER, having come on for hearing on the plaintiff's motion for a permanent injunction, the Court having considered the submissions by the plaintiff John Doe, defendant Benton County, and defendants Donna Zink and John Doe (Jeffery) Zink, the arguments of counsel and Ms. Zink, and considered the following pleadings:

1. Plaintiff's Motion and Memorandum in Support of Permanent Injunction;
2. Plaintiff's Motion for Preliminary Injunction;
3. Memorandum of Authorities in Support of Plaintiff's Motion for Preliminary Injunctive Relief;
4. Declaration of Eric B. Eisinger in Support of Motion for Preliminary Injunctive Relief;

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5. Declaration of John Doe;
6. Response to Plaintiff's Motion for Preliminary Injunctive Relief (Benton County);
7. Declaration of Lukson in Support of Benton County's Response to Plaintiff's Motion for Preliminary Injunctive Relief;
8. Supplemental Memorandum in Support of Plaintiff's Motion for Preliminary Injunctive Relief;
9. Response to Plaintiffs' Motion for Preliminary Injunction (Jeff & Donna Zink);
10. Declaration of Donna Zink in Opposition of Motion for Preliminary Injunctive Relief;
11. Plaintiff's Motion to Modify Injunction;
12. Memorandum of Authorities in Support of Plaintiff's Motion to Modify Injunction;
13. Declaration of Bret Uhrich in Support of Motion to Modify Injunction;
14. Response to Plaintiff's Motion to Modify Injunction (Benton County);
15. Memorandum of Authorities in Opposition to Plaintiff's Motion to Modify Temporary Injunction to Include 80,000 E-mails (Jeff and Donna Zink); and
16. Declaration of Donna Zink;
17. Benton County's Response in Opposition to Motion for Permanent Injunctive Relief;
18. Declaration of Ryan Lukson in Support of Benton County's Response in Opposition to Motion for Permanent Injunctive Relief;
19. Memorandum of Authorities in Opposition to Plaintiff's Motion for Permanent Injunction (Jeff and Donna Zink);
20. Declaration of Donna Zink Supporting Memorandum in Opposition to Plaintiff's Motion for Permanent Injunction;

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NOW, WHEREFORE, does hereby make the following:

I. FINDINGS OF FACT

1. Benton County is a public agency as defined by RCW 42.56.010(1).

2. On July 15, 2013, Defendant Donna Zink made a public records request to Defendant Benton County for "all level one sex offender registration forms and information filed/maintained in Benton County."

3. The records requested by Ms. Zink meet the definition of "public record" as defined by RCW 42.56.010(3).

4. On July 17, 2013, Benton County sent an e-mail to Ms. Zink seeking clarification of her initial request.

5. On July 27, 2013, Ms. Zink clarified that her request was for "a copy of all level one sex offender registration forms filed with Benton County" and "a list of all level one sex offenders registered in Benton County, to include Level 2 and Level 3 if available."

6. On July 31, 2013, Defendant Benton County responded to Ms. Zink indicating that because the records "are potentially exempt from disclosure under RCW 4.24.550(3) and RCW 42.56.240(1)" Benton County would provide notice of the record request to all affected sex offenders so that they can seek an injunction if they believe the records are exempt from disclosure pursuant to RCW 42.56.540. The County made clear to Ms. Zink that if it did not receive an injunction prohibiting the release of documents it would make the records requested available for release with the exception of the individual social security numbers.

7. On August 1, 2013, Ms. Zink made an additional request to Benton County for a copy of "any and all letters you send out to sex offenders in Benton County notifying them that I have requested to review their registration forms," as well as a list of people that Benton County will be notifying. The County subsequently informed Ms. Zink it had no documents responsive to her request as the documents she requested had not been created yet.

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8. On August 6, 2013, Ms. Zink made a further request to Benton County for "copies of the notifications sent to all convicted level one sex offenders, notifying them that I requested their registration form" as well as "a copy of the list of sex offenders sent letters so that they can file an injunction to stop release of their sex offender registration forms."

9. On September 18, 2013, Ms. Zink made a public records request to Benton County for "copies of all denial letters and/or e-mail sent out by Benton County to any agencies or individuals who requested sex offender information and/or records over the last ten years."

10. In conducting a key word search of its email system to search for records responsive to Ms. Zink's request Benton County gathered what it believed to be at the time roughly 80,000 potentially responsive emails.

11. On November 1, 2013, Benton County notified Ms. Zink after review of 5,000 of the roughly 80,000 emails it had been unable to locate any responsive records other than the emails to Ray Tolcacher that had previously been provided by the County to Ms. Zink in a prior request.

12. On November 1, 2013, Ms. Zink amended her request to be for the roughly 80,000 emails the County gathered in its search for her initial request of September 18, 2013 (hereinafter the 80,000 email request).

13. On December 2, 2013, after reviewing documents within the 80,000 email request, Benton County notified Plaintiffs' counsel that some of Plaintiffs' names were within the records requested.

14. Plaintiff resides in Benton County.

15. Plaintiff is a Level I sex offender and is in compliance with all registration requirements. Disclosure of Plaintiff's Level I registration status and conviction information will irreparably impact his job, potentially expose him to retaliatory acts, and harm relations with family members.

16. The records that are being enjoined specifically pertain to the Plaintiff.

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17. Ms. Zink is not commissioned as a law enforcement officer with any law enforcement agency.

18. Ms. Zink is not affiliated with any public or private school regulated under Title 28A RCW or chapter 72.40 RCW.

19. Ms. Zink is not a victim or witness to Plaintiff's offense.

20. The requested Level I offender information is not relevant or necessary to Ms. Zink.

21. Ms. Zink lives in North Franklin County and does not live near where the Plaintiff resides, expects to reside, or is regularly found.

22. Ms. Zink has stated in open court her intent to disclose information about Plaintiff on the internet.

23. Plaintiff has a legitimate concern that the dissemination of the forms they have submitted to Benton County would result in harmful, embarrassing consequences.

24. Plaintiff will suffer actual, irreparable harm if the records are released to Ms. Zink.

25. Final determination of the exemption status of any documents within the 80,000 e-mail request cannot be made until the records containing the name of the Plaintiff are reviewed in-camera.

Based on the foregoing findings of fact, the court does hereby make the following:

II. CONCLUSIONS OF LAW

1. A non-agency party seeking a permanent injunction under the Public Records Act must prove that: (1) the record in question specifically pertains to that party, (2) an exemption applies, and (3) disclosure would not be in the public interest and would substantially and irreparably harm that party or a vital government function. *Ameriquest Mortgage Co. v. Office of Attorney Gen. of Washington*, 177 Wn.2d 467, 487, 300 P.3d 799, 809 (2013).

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2. Specific exemptions may arise under the PRA or by other statute which exempts or prohibits disclosure of specific information or records. RCW 42.56.070(1).

3. RCW 4.24.550 is an "other statute" exempting disclosure of specific information or records as defined by RCW 42.56.070(1).

4. RCW 4.24.550 governs dissemination of information concerning offenders who commit sex offenses. RCW 10.97.050.

5. In enacting RCW 4.24.550, the legislature created a comprehensive and systematic protocol for the dissemination of sex offender registration information.

6. Information regarding Level III offenders, Level II offenders and out-of-compliance Level I offenders is maintained on the statewide registered kidnapping and sex offender web site, which is available to the public. The information on the website includes the offender's name, relevant criminal conviction, address by hundred block, physical description, and photograph. RCW 4.24.550(5).

7. Level I offender information must be must be shared with other appropriate law enforcement agencies and, if the offender is a student, the public or private school regulated under Title 28A RCW or chapter 72.40 RCW which the offender is attending, or planning to attend. RCW 4.24.550(3).

8. Otherwise, Level I offender information may only be disclosed if it is relevant and necessary and upon request, to any victim or witness to the offense and to any individual community member who lives near the residence where the offender resides, expects to reside, or is regularly found. RCW 4.24.550(3).

9. Our State Supreme Court has determined that Level I sex offender registrations are in most instances "confidential" and the public has no legitimate interest therein because those offenders do not pose a threat to the community under *State v. Ward*, 123 Wn.2d 488, 502-03 (1994). Plaintiffs will suffer actual irreparable harm if the records are released to Ms. Zink.

10. Absent a threat posed by a specific offender, Level I offender information is confidential and "disclosure would serve no legitimate purpose." *State v. Ward*, 123 Wn.2d 488, 503, 869 P.2d 1062 (1994).

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11. RCW 4.24.550(9) designates that only "relevant and necessary" information is not confidential except as may be otherwise provided by law. Except in the narrow circumstances where Level I offender information is relevant and necessary, "both the registrant information and the fact of registration remain confidential." *See Ward*, 123 Wn.2d at 502.

12. The offender registration forms, lists of level one sex offenders, and the letters sent out to Level I registrants in Benton County's possession all requested by Ms. Zink are exempt from disclosure under RCW 4.24.550.

13. RCW 42.56.240 exempts (1) specific intelligence information and (2) specific investigative records compiled by law enforcement, when the nondisclosure of such records is essential to effective law enforcement or for the protection of any person's right to privacy. RCW 42.56.240(1).

14. Records are specific investigative records if they were compiled as a result of a specific investigation focusing with special intensity upon a particular party. *Dawson v. Daly*, 120 Wn.2d 782, 793, 845 P.2d 995 (1993) *abrogated in part on other grounds by Soter v. Cowles Publ'g Co.*, 162 Wn.2d 716, 174 P.3d 60 (2007).

15. The gathering of special intelligence information requires an affirmative act on the part of the gatherer. *See King County v. Sheehan*, 114 Wn. App. 325, 337-38, 57 P.3d 307 (2002).

16. The offender registration forms, the letters sent to Level I registrants, and the list of Level I, Level II and Level III offenders are not exempt under RCW 42.56.240(1) because they are not specific investigative records compiled as a result of a specific investigation focusing with special intensity upon a particular party.

17. Plaintiffs' Level I offender information contained in the documents requested is not relevant or necessary to Ms. Zink.

18. The nondisclosure of Level I offender information is not essential for effective law enforcement.

19. Nondisclosure of Level I offender information is necessary to protect the Plaintiff's rights to privacy as disclosure would be highly offensive to a reasonable

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person, would substantially and irreparably harm Plaintiffs, and is not a legitimate concern of the public.

20. Ms. Zink is not entitled to penalties against Benton County for wrongful withholding of public records because the Benton County was prevented from doing so by a Court order. *Robbins, Geller, Rudman & Dowd, LLP v. State*, 44520-4-II, 2014 WL 839895, __ P.3d ___ (Wash. Ct. App. Mar. 4, 2014)

Based on the foregoing findings of fact and conclusions of law, the court does hereby make the following:

III. ORDER

1. Plaintiff's motion for permanent injunctive relief is granted.

2. Benton County is enjoined from releasing: (1) Plaintiff's Level I sex offender registration forms; (2) the list of all sex offenders registered in Benton County requested by Ms. Zink without first redacting Plaintiff's name, address, and telephone number; (3) the letter sent to Plaintiff notifying him of Ms. Zink's request to review his registration form; (4) to the extent such document exists, the list of sex offenders used to create the letters sent to all Level I sex offenders notifying them of Ms. Zink's request to review their registration forms without first redacting the Plaintiff's name, address and phone number; and (5) Plaintiff's unredacted declaration in support of this order.

3. Benton County is and shall be required, until further order of the Court, to provide the Court via email in installments with all records responsive to the 80,000 email request, and attachments thereto (as it currently exists or is amended in the future by Ms. Zink), that reference Plaintiffs for an in-camera review pursuant to RCW 42.56.550(3) so the Court can determine whether the records are exempt from release under RCW 42.56. et. seq.

4. Pursuant to guidelines set forth in WAC 44-14-08004(6), Benton County shall prepare and file an in-camera index describing each record referencing Plaintiffs, as well as any redactions it believes are necessitated by RCW 42.56 et. seq., to assist the

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Court in its in-camera review. The in-camera index shall be filed by the County and served on all parties on the same date the records are provided to the Court via email.

5. The Court, referencing the numbering system in the in-camera index, shall make a written determination provided to all parties, in intervals determined by the Court, whether the records provided require further or contrary redactions proposed by the County pursuant to RCW 42.56.et. seq., or if briefing and argument by the parties is appropriate. Benton County is enjoined from releasing the documents provided to the Court prior to the Court's determination.

6. Any party may seek reconsideration of the Court's determination pursuant to the rules and time limitations set forth in CR 59 and Benton/Franklin Counties Superior Court Local Civil Rule 59.

7. Ms. Zink's request for penalties against Benton County is denied.

8. That the posted injunction bond in the amount of $400.00 shall be exonerated and disbursed by the clerk to Walker Heye Meehan & Eisinger, PLLC at 1333 Columbia Park Trail, Ste. 220, Richland, WA 99352.

DONE this 27 day of June, 2014.

JUDGE / ~~COURT~~ COMMISSIONER

Presented by:

WALKER HEYE MEEHAN & EISINGER, PLLC
Attorneys for Plaintiff

By: _____
ERIC B. EISINGER, WSBA #34293
BRET UHRICH, WSBA #45595

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Approved as to form:

BENTON COUNTY PPROSECUTOR'S OFFICE
Attorney for Defendant Benton County

By: _____
RYAN LUKSON, WSBA #43377

DONNA ZINK
Pro Se Defendant

By: _____
DONNA ZINK

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EXHIBIT 7

2

FILED

2013 DEC -5 P 3:17

KIM EATON
EX OFFICIO CLERK OF

SUPERIOR COURT OF WASHINGTON FOR YAKIMA COUNTY

B.B.; B.M.A.; J.S.; M.S.; R.B.; R.J.W.; S.B.; S.L.; S.M.; J.E.; JANE DOE

Plaintiffs,

v.

KEN IRWIN, in his official capacity as the Sheriff of Yakima County, Washington,

Defendant.

13 2 04101 3

No. _____

ORDER FOR TEMPORARY INJUNCTIVE RELIEF

NOTE ON MOTION CALENDAR: [Insert Date]

This matter having come regularly before the above-entitled court and, being fully apprised in the premises, this court makes the following

I. FINDINGS OF FACT

1.1 Plaintiffs are all residents of Yakima County, Washington.

1.2 Plaintiffs are all persons for whom the records at issue specifically pertains, are residents of Yakima County, Washington.

1.3 Defendant Ken Irwin (hereinafter "the Sheriff") is the Sheriff of Yakima County, Washington. The Sheriff is the chief law enforcement officer of the county.

1.4 This court has jurisdiction over the parties to this action and venue is properly in Yakima County Superior Court.

1.5 Plaintiffs have established that they will be irreparably damaged if the temporary injunction is denied.

This Court furthermore makes the following **CONCLUSIONS OF LAW and ORDER:**

1 The Yakima County Sheriff's Office is hereby enjoined and prohibited from releasing level I sex offender registration forms to the requestor pursuant to RCW 7.40.050. This Order shall remain in full force and effect until a hearing on the merits can be heard.

2 The Clerk of Court shall set this matter for hearing on the merits to be held on TUES the 17TH day of December, 2013, at 1:30pm or as soon thereafter as the matter may be heard.

3 Plaintiffs shall provide Notice of the hearing to the Yakima County Sheriff's Office.

4 No bond shall be required to be posted by the Plaintiffs at this time. However, the Court reserves the right to revisit that issue at the time of the hearing on the merits.

DATED this 5th day of December 2013.

Superior Court Judge

STATE OF WASHINGTON
COUNTY OF YAKIMA

I, Kim M. Eaton, Clerk of the above entitled court, do hereby certify that the foregoing Instrument is a true and correct copy of the original now on file in my office. In witness whereof, I hereunto set my hand and the seal of said court this 5 day of DEC 2013.

Kim M. Eaton, CLERK

By _____ Deputy

EXHIBIT 8

Should there be a level 1 sex offender registry

By Annie Andrews (http://www.keprtv.com/about/people/news/188441241.html) | Published: Aug 9, 2013 at 10:51 PM PST (2013-08-10T6:51:24Z)

KENNEWICK, Wash. -- Do you have a right to know or should juvenile sex offenders and other level ones have their addresses kept secret?

The issue came up when a public records request was filed in Benton and Franklin County. It came at the hands of Donna Zink, a woman notorious for "overly excessive" records requests. She's won hundreds of thousands of dollars in lawsuits before for how the city of Mesa has mishandled her public records requests. But this time she says it's not about the money.

Joel is a registered sex offender. He raped a child more than a decade ago -- which is why he didn't want to show his face or give his full name. Joel's considered a low risk to reoffend so his name and address can't be found through the typical online sex offender search, but that could change.

"I am writing to request all level one sex offender registration forms filed and maintained in Benton County," said Joel, reading from a letter. He got this letter in his mailbox Wednesday. It notified him that his personal information was set to be released to a woman named Donna Zink.

"[She is requesting] everything except for my social security number. That includes name, date of birth, address, phone number, driver's license number if the person has one."

Zink is a former mayor of Mesa. She asked to know the names and addresses of every level-one sex offender living in Benton and Franklin counties, that's 577 people in all. The list includes juveniles whose records are normally protected.

Benton County sent a letter to all of its level one offenders informing them of the request, and saying the only way to stop it is to file an injunction by August 18th. Franklin County did not send a letter, it already gave Zink the info she asked for.

Civil rights attorney Moe Spencer says the adult sex offenders don't have much of a case to stop the release. "Both counties are in their realms. Both counties are doing the right thing," he said. Spencer said it'd be the counties on the hook if they didn't hand over the public records.

"If there's not an exemption that we can't give, then we're opening ourselves up to a suit. There have been counties bankrupt by a suit," he said.

It's a reality both counties know well, especially Franklin. Zink won a judgment against tiny Mesa for a mishandled public records request. She was once a council woman and mayor in the small central Franklin town. Zink's well-versed in public records laws.

"If you do not release the documents requested, I will be forced to file suit against your agency regardless of any action brought by any sex offenders affected by my request," she said in an email to Benton County.

Zink wouldn't agree to an on-camera interview but told us over Facebook -- she'd sue again if she had to.
Zink says this isn't about lawsuits, but that she believes every registered sex offenders should be listed online for public safety. Joel doesn't see why a woman in Mesa should be able to expose his background if the sheriff's department doesn't.

"I've paid my time. I've done what the law requires. If you're requiring more of me and if you're not going to change the law, then you're just a vigilante," said Joel.

Joel worries that if his home address is public, he'll be the one at risk. "There are groups that are out there that will intimidate sex offenders to leave their homes," adding he fears for his life.

Zink's request includes juvenile records. The Benton County Sheriff's Department told KEPR it's taken dozens of calls from parents worried about their child's sex offender status being accessible to the world when it used to only be allowed on a need-to-know basis. Franklin County already handed over its records on level-one offenders. KEPR was unable to confirm whether that included juvenile records.

Zink told us Friday night, she was not aware juveniles were a part of the list, but added she will release their information at her discretion.

EXHIBIT 9

Seriously. Because I legitimately requested access to public records I have to be subjected to this? Who does this guy think he is? If the courts don't stop this I don't know what I am or can do. I will definitely be looking into a protection order.

on. And I thought it was a pretty would have thought that the ACLU would offenders. Not me. I was considered off track on that one.

Donna Zink

SSOS4 evaluation

ns and requests for production looking for. Oh well.

Donna Zink

Here are the documents being considered tomorrow morning. I have starred the four important ones and the rest are for Dow's motion to amend his complaint for the 3rd time and will also be used for the December 6, 2013 hearing before VanderSchoor. They do say the third time is the charm so who knows.

Show all downloads...

EXHIBIT 10

Donna Zink - Google+

https://plus.google.com/107910801786883046416/posts

About Posts YouTube +1's

Patrol who is not even a party to the action and is a different agency all together. And he is still seeking to have me fined because I requested records from a

+1

don't kno
annoying
have used

Donna Zink

So here is the list I am starting for all Level I offenders in Benton County. These are the non-compliant offenders and the offenders who have no level. But if they do become compliant they will be taken off the official on-line web site for DC. So I thought I would make sure and get copies before that

Benton County Level I Sex Offenders

+1

Donna Zink

So the cat is out of the proverbial bag I guess.

A lot has been going on paper work wise. I got served with yet another John Doe suit. This time it is a juvenile. I got that one on the same day we read three stories

+1

thanks

Donna Zink

I used to wonder how a court could decide that 8 consecutive sets of meeting minutes all kept in the same minute book could take two months for an agency to produce. That was one of my biggest over whelming requests made to the City of Mesa. But this time I have out done myself. I wonder if this is now Lenk got

+1

Donna Zink

So it was a resounding lose in court today. Apparently those really long documents the parties filed arguing our position are not pleadings after all. Go figure. Neither the judge nor the other attorneys could says exactly what those documents with all

+1

A1-72

EXHIBIT 11

Donna Zink - Google+

https://plus.google.com/107910801786883046416/posts

Donna Zink

About Posts YouTube +1s

Formerly David Carpenter wasn't pleeing guilty now was he. He is a Level I who is compliant since he is not listed in the official WASPC data base. If you are not there and live in Washington you must be compliant. I guess my requests have helped in that respect.

Pierce County Superior Court Criminal Case 07-1-03209-

Vehicle Vessel Records Disclosure Unit.pdf - Google Drive

+1

Donna Zink

So SHB 1684 was voted out of committee. I will post the video after they put it into the archive. Usually takes two hours.

For some reason they have not posted the amendments that were

+1

Donna

I have finally found time to start processing the documents. Here is the folder and the "publics" records I've managed to get my hands on. I am going to put all the documents here as I have time and see how it goes. Not fancy or frilly but workable.

Sex Offenders in Washington State

Donna Zink

The beginning of the hearing on HB 1691 giving penalties to the State of Washington instead of requesters who didn't get the records from the agency.

House State Government Committee - TVW Video

+1

Donna

Donna Zink

The rest of the he
the committee he

They don't seem t

EXHIBIT 13

☐ EXPEDITE
☐ No Hearing Set
☑ Hearing is Set
Date: July 17, 2015
Time: 11:00 AM
Judge/Calendar: Hon. Carol Murphy / Civil Calendar

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

JOHN DOE P, JOHN DOE Q, JOHN DOE R, and JOHN DOE S, as individuals and on behalf of those similarly situated,

Plaintiffs,

v.

THURSTON COUNTY, a municipal organization, and its departments THURSTON COUNTY PROSECUTING ATTORNEY and THURSON COUNTY SHERIFF

Defendants,

v.

DONNA ZINK, a married woman,

Requestor.

No. 15-2-00094-0

DECLARATION OF BRAD MERYHEW

I, Brad Meryhew, declare as follows:

Background and Qualifications

1. I am an attorney in private practice in Seattle, Washington. I have been a member of the Washington State Bar association since June 6, 1997.

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(206) 624-2184

2. My practice focuses exclusively on the representation of adults and juveniles charged with sexual misconduct in Washington State and federal courts. I have represented approximately 750 individuals on sexually related offenses in my career.

3. Since 2008, I have been the designated representative of the Washington Association of Criminal Defense Lawyers and Washington Defender Association on the Washington Sex Offender Policy Board ("SOPB"). The Washington Legislature created the SOPB in 2008 to advise the Legislature regarding the research literature and best practices in the management of sex offenders.

4. As a member of the SOPB, I have reviewed scores of scholarly journal articles and papers regarding the rationale, success and consequences of sex offender registration and community notification.

5. In 2009, I chaired a workgroup of the SOPB, which made several recommendations to the Legislature for significant changes in Washington's sex offender registration and community notification laws. The Washington Legislature adopted several of those recommendations in 2010 and 2011, resulting in changes to, and expansion of, the Special Sex Offender Sentencing Alternative ("SSOSA") concept.

6. I have spoken on the topic of sex offender management and litigation, registration and community notification, evaluation and treatment, and risk assessment before a wide variety of organizations including the National Association of Criminal Defense Lawyers, the Washington Association of Criminal Defense Lawyers, the Washington Superior Court Judges Association, the Washington Defender Association, the Washington Association for the Treatment of Sexual Abusers, Juvenile Rehabilitation Authority treatment providers, Department of

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Developmental Disability caseworkers, and the Pierce County Department of Assigned Counsel.

7. My office regularly represents individuals seeking a SSOSA sentence, and I have been working with clients seeking this option since 1998. In the last several years, my office has worked with scores of individuals seeking and receiving the SSOSA sentencing option.

Psychosexual Evaluations

8. In order for a defendant in a criminal case to be admitted to a state certified sex offender treatment program, whether they are seeking a SSOSA or not, they must complete a psychosexual evaluation and be found amenable to treatment and at low enough risk to be treated in the community. These evaluations are an essential step for any defendant who hopes to participate in specialized sex offender treatment, and where this treatment is court-ordered, defendants are required to participate in these evaluations. I have personally referred clients for and reviewed hundreds of psychosexual evaluations, including many for SSOSA purposes.

9. I have written and spoken on the topic of psychosexual evaluations and how to prepare clients for those very difficult assessments. In those trainings I emphasize how important it is for clients to be honest and forthcoming about even the most embarrassing details of their history in order for them to successfully complete these evaluations. The integrity and quality of the evaluations themselves are highly dependent upon accurate and detailed client information; and without accurate and complete disclosures by the defendant, the integrity of the entire treatment process is eroded.

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10. The key to obtaining that level of disclosure is the ability to assure defendants that their most intimate details will be confidential, and that the most intimate and personal details of their life will not be aired to the general public. My clients come to see how important it is to make a full and accurate disclosure of their history when they understand that this information will be used by the court and the State. If they were instead advised that the evaluations will become public documents available for a generalized mass release, many would likely refuse to participate in the process and thus fail to achieve the reduced risk that comes from participation in treatment.

11. Psychosexual evaluations include not only an offender's history and details about their crime, but also intimate details about an offender's entire life. This often includes identifying all of their past sexual partners, victims and non-victims, and the details of their sexual activities. It includes uncharged offenses that have often been committed against family members, neighbors, and others who are easily identifiable in the evaluation.

12. These reports also include the intimate details of an offender's marriage or significant relationships. The risk of public humiliation and ridicule and the privacy interests of many individuals other than an offender and victim are clearly implicated by these sensitive evaluations. The disclosure of one's past sexual history, often including embarrassing and very detailed accounts of sexual activity, would no doubt be traumatizing and humiliating for past sexual partners and others named in a defendant's life history. This kind of disclosure could easily lead individuals to experience harassment and mental anguish when their intimate life secrets are suddenly made public to anyone who asks, or posted to the Internet.

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13. Psychosexual evaluations are inherently sensitive mental health care records, and experts who produce them are concerned about potential misunderstandings in reviewing them. For example, Bill Lennon of Bellevue Community Services, a well-respected leader in the treatment community, always includes this disclaimer at the top of his evaluation, and many or most evaluators have similar disclaimers. Mr. Lennon's reads:

> This evaluation should not be shown to the client or the client's family without the accompanying interpretation of a qualified professional. This evaluation contains personal and sensitive information that may be misinterpreted if used out of context. In addition, redisclosure of this evaluation to any party other than the individual for whom it was conducted requires a valid release of information from the client.

SSOSA Concept and Efficacy

14. In 2013, I participated as a member of the SOPB in a review of the SSOSA that had been requested by the Washington State Senate Human Services & Corrections Committee. We prepared a Report to the Legislature in December, 2013 that reviewed the history and evolution of SSOSAs and made recommendations for changes to and expansions of the SSOSA concept.

15. The SOPB SSOSA Report noted that eligibility for SSOSAs has steadily decreased due to the addition of various restrictions since its inception in 1984. Citing a study by the Washington Institute for Public Policy in 2006, the SOPB Report noted these trends in the granting of SSOSA sentences in Washington:

    a. In 1986, 59% of sex offenders meeting the statutory criteria received a SSOSA.

    b. By 1997, that percentage dropped to approximately 40%.

    c. In 2005, 35% of sex offenders meeting the statutory criteria received a SSOSA.

    d. Between 1986 and 2004, as a portion of all sex offenders sentenced, SSOSA

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offenders had declined from approximately 40% to 15%. (WSIPP, Special Sex Offender Sentencing Alternative Trends, Barnoski, 2006, Doc No. 06-01-1205).

e. In Fiscal Year 2012, only 95 offenders received a SSOSA sentence in the entire State of Washington.

16. The effectiveness of the SSOSA sentencing option in protecting community safety was underscored by the SOPB 2013 SSOSA report, which found that:

> Sex offenders who complete SSOSA have the lowest recidivism rate of sex offenders across sex offense categories (felony and misdemeanor). Additionally, offenders who complete a SSOSA have lower recidivism rates than otherwise SSOSA eligible incarcerated offenders. This reduced recidivism rate is demonstrated across felony, felony sex, violent felony and felony sex crime charges.

(WSIPP, Special Sex Offender Sentencing Alternative Trends, Barnoski, 2006, Doc No. 06-01-1205). The efficacy of the SSOSA program is demonstrated in reduced recidivism rates, low revocation frequency, and significant cost savings to the State.

17. SSOSA applicants are among the lowest risk of all sex offenders. Typically their victims are family members, and their responsiveness in treatment is impressive. The research demonstrates that offenders receiving a SSOSA sentence are at the lowest risk of reoffense of any other felony offense, sexual or non-sexual. (WSIPP, Barnoski, 2006, Doc. No. 06-01-1205).

18. The entire sex offender management system relies on the availability of accurate historical data regarding offenders in order to apply the principles of actuarial based risk assessment and the tools of cognitive behavioral therapy. Public policy decisions that inhibit the exchange and disclosure of this information undermine the ability of the entire system to adequately assess and respond to risks to community safety.

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19. The United States Center for Sex Offender Management has underscored the critical role that accurate information plays in the management of sex offenders. They write: "In the absence of current and accurate information about individual offenders, the range of professionals involved in managing adult and juvenile sex offenders are at a clear disadvantage, and their subsequent responses can have serious consequences." (CSOM, The Importance of Assessment in Sex Offender Management, 2007).

Harm Of Generalized Public Disclosure

20. The risk of general public disclosure of very intimate, personal details about themselves, their family, and all of their past sexual partners will undoubtedly lead many offenders to refuse to participate in evaluation and assessment, and will lead others to offer less than complete information. This erosion of the quality of information available to the courts, treatment providers, corrections, and law enforcement will negatively affect public safety.

21. The Center for Sex Offender Management made this point in their Comprehensive Assessment Protocol: Assessment, when they wrote:

> Determining what to do with which offenders, how and when to do it, and why it should be done demands careful consideration to the varied levels of risk, needs, development, and functioning of these individuals. This requires having access to – and making good use of – comprehensive assessment information. Put simply, well executed assessments are the key to informed decision making with adult and juvenile sex offenders.

CSOM, The Importance of Assessment in Sex Offender Management, 2007.

22. In addition, the general public disclosure of the sex offender registrations status of level I sex offenders or those level I offenders relieved of the duty to register would have disastrous consequences for those individuals, their families and their

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victims. Since Washington first enacted sex offender registration the lowest risk offenders have not been subject to community notification on the Internet or through social media. They have built lives relying on these laws to protect them from public ridicule and the other consequences that will follow a release and publication of this information. They have been told that if they complete treatment and follow the rules they will avoid this scrutiny.

23. Even Level II offenders would be affected by this release, as the hope of earning a reduction to a Level I is a powerful incentive for them to fully comply with their supervision and court orders. If all offenders are now on the Internet regardless of their compliance or relative risk to the community, those offenders may lose some incentive to comply.

24. There will be a significant impact on the victims and other innocent family members from the disclosure of information regarding Level I offenders. Level I offenders are low risk offenders who often have victims who are family members or close friends, and this process of publicizing the offender will also publicize and have a huge negative impact on the victims of these crimes. The disclosure of a relative perpetrator for example almost inevitably leads to the person they victimized being disclosed as the victim. This impact can be devastating the efforts to reunify families and to efforts to reduce the trauma and distress to victims.

25. Individuals who appear on public web sites are subject to significant barriers to housing, employment, and reintegration into the community. This has been borne out in social science research and in my

experience working with hundreds of registered sex offenders. When a client is subject to community notification they are often unable to secure stable housing or employment. Offenders who are "outed" by public web sites often lose their jobs or find it next to impossible to find employment. Housing opportunities for offenders who are identified on public web sites are significantly reduced, and in my experience this barrier can often lead to homelessness and other instability in the offender's life. This certainly does not enhance community safety. Even offenders not subject to community notification struggle to find work and housing, as the duty to register continues to appear in their background checks.

26. Public disclosure of this kind of information regarding low risk offenders can lead to social isolation and loss of significant relationships for the person suddenly subject to the infamy that this would cause and for their families. The impact of sudden social pressures on the families of Level I offenders can be very significant, and can affect spouses and children of offenders more than the offenders themselves. They pay the price when housing and employment are lost, not just the offender. The offender's children, spouse or partner, parents, grandparents and siblings will all be affected by this disclosure. Similar consequences would occur for individuals who have been relieved of the duty to register but are then identified as sex offenders in a public disclosure.

27. In recent years we have seen the growth of a number of web sites that essentially attempt to extort money from those who have ever been required to register as sex offenders by posting their names, pictures, addresses and other personal information online in searchable web-based

sex offender registries based on data obtained from available sources, and then refusing to remove that information unless they are paid. These sites list this data and refuse to remove the data even if the person is no longer required by the law to register as a sex offender.

28. These web sites use data from sex-offender registries maintained by law enforcement agencies to basically extort money from purported sex-offenders. For example, SORArchives.com, Offendex.com, and Onlinedetective.com have been profiting from these schemes, charging up to $499 for each offender that is removed. Other sites, including HomeFacts, make it clear that they make little or no effort to insure the accuracy of their online registries. The HomeFacts site includes a disclaimer that says, "No representation is made that the person listed here is currently on the state's offenders registry. All names presented here were gathered at a past date. Some persons listed might no longer be registered offenders and others might have been added. Some addresses or other data might no longer be current. Owners of Homefacts.com assume no responsibility (and expressly disclaim responsibility) for updating this site to keep information current or to ensure the accuracy or completeness of any posted information. Operators do not always take down sex offender profiles after the demanded payments are made, and they have been known to launch online harassment campaigns against those who balked at financial demands or filed complaints. These sites cause considerable harm to those who are not currently identified on state run public registries, or who have been relieved of the duty to register and

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gone on with their lives, only to have their names appear here to their detriment.

I declare under perjury of the laws of the State of Washington that the foregoing is true and correct.

Brad Meryhew

Seattle, WA 5-18-15

Date and Place

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EXHIBIT 14

☐ EXPEDITE
☐ No Hearing Set
☑ Hearing is Set
Date: July 17, 2015
Time: 11:00 AM
Judge/Calendar: Hon. Carol Murphy / Civil Calendar

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

JOHN DOE P, JOHN DOE Q, JOHN DOE R, and JOHN DOE S, as individuals and on behalf of those similarly situated,

Plaintiffs,

v.

THURSTON COUNTY, a municipal organization, and its departments THURSTON COUNTY PROSECUTING ATTORNEY and THURSON COUNTY SHERIFF

Defendants,

v.

DONNA ZINK, a married woman,

Requestor.

No. 15-2-00094-0

DECLARATION OF WASHINGTON ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS

1. We, Paul Spizman, Jennifer Wheeler, Michael O'Connell and Richard L. Packard, on behalf of the board of the Washington Association for the Treatment of Sexual Abusers ("WATSA"), declare the following:

Introduction and Qualifications

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1. WATSA is a state chapter of an international organization, the Association for the Treatment of Sexual Abusers (ATSA). These organizations are multi-disciplinary organizations, comprised primarily of mental health professionals who specialize in the evaluation and treatment of problem sexual behavior. In addition to mental health professionals, WATSA and ATSA members also include researchers, attorneys, correctional officers, administrators, and other professionals involved in the treatment or management of persons who have committed sexual offenses.

2. Dr. Paul Spizman is the current President of WATSA. Dr. Spizman is a licensed clinical psychologist and Certified Sex Offender Treatment Provider ("CSOTP"). He has been providing treatment to sexual offenders since 2001, and was a psychologist with the Washington Special Commitment Center for sexually violent predators from 2001 to 2012. During that time, he has worked with several hundred patients. Dr. Spizman regularly trains other professionals, including through presentations with the Washington Association for the Treatment of Sexual Abusers, the national Association for the Treatment of Sexual Abusers, and the American Psychology Law Society.

3. Dr. Jennifer Wheeler is a clinical and forensic psychologist, CSOTP, past president of WATSA, and current member of the ATSA Executive Board. Dr. Wheeler has evaluated and/or treated over 100 sexual offenders, including through service as a psychologist with the Department of Corrections between 2004-2005 and the Special Commitment Center from 2005-2006. Dr. Wheeler has published numerous papers and chapters on the evaluation and treatment of sexual offense behavior in peer-reviewed journals and books, including: Jennifer Wheeler & Christmas Covell, *Recidivism Risk Reduction Therapy (3RT): Cognitive-Behavioral Approaches to Treating Sexual Offense Behavior*, *in* Forensic CBT: A

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Handbook for Clinical Practice 302-06 (Raymond C. Tafrate and Damon Mitchell eds., Wiley-Blackwell 2013); Christmas Covell and Jennifer Wheeler, *Application of the Responsivity Principle to Treatment of Sexual Offense Behavior*, 11(1) Journal of Forensic Psychology Practice, 2011, at 61-72; K. A. B. Newring & Jennifer Wheeler, *Functional Analytic Psychotherapy with People Convicted of Sexual Offenses, in* The Practice of Functional Analytic Psychotherapy 225-46 (J. Kanter, M. Tsai, B. Kohlenberg eds., Springer Publ'g Co. 2010); Christmas Covell & Jennifer Wheeler, *Revisiting the 'Irreconcilable Conflict between Therapeutic and Forensic Roles': Implications for Sex Offender Specialists*, 26(3) American Psychology-Law Society Newsletter, 2006, at 6-8; Jennifer Wheeler, William George, & G. Alan Marlatt, *Relapse Prevention for Sexual Offenders: Considerations for the Abstinence Violation Effect*, 18(3) Sexual Abuse: Journal of Research and Treatment, at 233-248; Jennifer Wheeler, William George, & Kari Stephens, *Assessment of Sexual Offenders: A Model for Integrating Dynamic Risk Assessment and Relapse Prevention Approaches, in* Assessment of Addictive Behaviors 392-424 (D.M. Donavan & G.A. Marlatt eds., Guildford Publications, 2d Ed. 2007); Jennifer Wheeler, William George, & Susan Stoner, *Enhancing the Relapse Prevention Model for Sex Offenders: Adding Recidivism Risk Reduction Therapy (3RT) to Target Offenders' Dynamic Risk Needs, in* Relapse Prevention 333-362 (G.A. Marlatt & D.M. Donavan eds., Guilford Publications, 2d Ed. 2005).

4. Dr. Michael O'Connell is the past president of WATSA and a current WATSA board member. He has a Doctor of Philosophy in Counseling Psychology and a Masters in Social Work and is a CSOTP. Dr. O'Connell has been providing treatment to sexual offenders since 1981. In that time, he has worked with well over 1000, mostly adult male sex offender clients. Dr. O'Connell is the author of numerous peer reviewed articles

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related to sexual offenders, and co-author of a book, *Working with Sex Offenders* (1990).

5. Dr. Richard L. Packard is a clinical psychologist, CSOTP, and past president of WATSA. He has a Doctor of Philosophy in Counseling Psychology from the University of Washington, and has provided evaluation and treatment services to sexual offenders for over 35 years, including as the Director of Research and Assessment for the Department of Corrections' Sex Offender Treatment Program between 1995 and 1998. Dr. Packard has evaluated and treated approximately 1400 individuals during his career. In 2011, he received the Phillip L. Russell Memorial Achievement Award for professional achievement and contributions to the field from WATSA. He has presented dozens of trainings on sex offender treatment and evaluation to organizations such as the Washington Office of the Attorney General, ATSA, the United States Probation Office, the Washington Department of Corrections, the Idaho Sexual Offender Classification Board, and the Colorado Division of Criminal Justice. In addition, Dr. Packard has contributed articles or chapters to peer-reviewed journals and books, including, with Jill Levenson, Ph.D., *Revisiting the Reliability of Diagnostic Decisions in Sex Offender Civil Commitment*1(3) Sexual Offender Treatment, 2006, at 1 – 15.

Special Sex Offender Sentencing Alternative

6. The Special Sex Offender Sentencing Alternative (SSOSA) was proposed by treatment providers, victim advocates, and others, to be incorporated into the Sentencing Reform Act of 1984, as the State changed from an indeterminate to a determinate sentencing model. SSOSA provided a way to offer a community treatment alternative for persons convicted of felony sex offenses that might have been lost with the change to a system in which every offense resulted in a fixed term of confinement.

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7. This approach to community-based treatment has been remarkably successful for both identifying and treating those offenders who can safely benefit from treatment, contribute to the welfare of their victims and families, and reduce incarceration and supervision costs. In a 2005 study commissioned by the Washington State Legislature, SSOSA offenders had the lowest recidivism rates for any type of crime, including sex offenses. In fact, the total recidivism rates for SSOSA offenders were less than one-third of other offenders.

8. One of the purposes of conducting a SSOSA evaluation is to identify and describe an individual's psychological, behavioral, and lifestyle factors associated with risk to re-offend. Like all comprehensive mental health evaluations, SSOSA evaluations include a personal history (including a psychosexual history), an assessment of current functioning, a mental health diagnosis (when indicated), and a proposed set of treatment goals (*see* WAC 246.930.320 requirements for SSOSA evaluations, attached). The clinical approach of an evaluator completing a SSOSA evaluation is the same as the clinical approach of an evaluator conducting an intake for a non-criminal justice involved person seeking mental health treatment for a sexual behavior problem. The fact that findings and progress are documented in a record provided to the courts and law enforcement does not change the essential nature of the treatment process. Accordingly, it is the position of WATSA that SSOSA evaluations are mental health evaluations.

9. Therefore, SSOSA evaluations are health care records and, as such, are subject to federal regulations, such as the Health Insurance Portability and Accountability Act (HIPAA), which controls the release of health care information, and RCW 70.02 regarding Medical Records-Health Care Information Access and Disclosure. Except for specifically detailed reasons, health care providers may not release protected health information without the permission of the patient. Before beginning an evaluation or treatment, a

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client is provided with information regarding HIPAA, and before any such protected health information can be released to a third party, a client must sign a form granting that release.

10. Similarly, a necessary part of SSOSA *treatment* is to target the individual's changeable psychological, behavioral, and lifestyle factors that are associated with recidivism risk, in an effort to decrease that individual's risk to sexually re-offend. However, a treatment program for a specific offender almost always includes other treatment goals as well, which serve to improve a client's emotional and interpersonal functioning, as well as relations with others. These treatment goals are typically designed to help mitigate the harm they have caused and improve their likelihood for healthier behavior in the future. Accordingly, it is the position of WATSA that SSOSA treatment is specialized mental health treatment.

11. In order to conduct SSOSA evaluations and treatment, CSOTPs are required to have extensive training in a mental health field, as well as specialty training in the evaluation and treatment of sexual offense behavior (*see* WAC 246.930 requirements for this credential, attached). All CSOTPs must possess an underlying credential as a licensed health care professional in Washington State, and comply with the state laws and administrative codes regulating licensed health care professionals, including RCW 70.02, Medical Records-Health Care Information Access and Disclosure. Accordingly, it is the position of WATSA that SSOSA evaluators and treatment providers are mental health professionals who are required by law to comply with the legal requirements of their respective professions when providing mental health evaluations and treatment.

12. The SSOSA statute requires, and sentencing orders typically direct, the treatment participant to permit the treatment provider to send evaluations and treatment progress reports to specific parties – including the court and the supervising

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community corrections officer. As with any mental health record, the release and distribution of these records by the participant is limited to the purpose that was originally authorized. Consistent with HIPAA and state health care regulations, treatment participants and treatment providers expect the distribution of these mental health records to be limited to those named on the participant's signed consent form for release of information.

13. Furthermore, each release has an expiration date after which no further release can be made. As with any mental health records, the authorization to release these records does *not* include any indication that these records will be subject to public disclosure. On the contrary, as with any court-ordered mental health treatment records, it is the expectation of the treatment provider releasing those records that the distribution of those records will be limited to authorized agents of the court and parties to the case and would not be subject to public disclosure.

14. Therefore, it is the position of WATSA that SSOSA evaluations and treatment records are mental health treatment records and should be subject to the same privacy protections as any other mental health treatment records. WATSA is also concerned that if an exception is made for SSOSA treatment records and these become subject to public disclosure, this could significantly and negatively impact our ability to meaningfully engage offenders in the treatment process. It is further our position that by deterring meaningful participation in SSOSA treatment, release of these mental health records to the public would ultimately result in an increased - not decreased - risk to the community.

Risk Level Classifications

15. The State of Washington has been a leader in recognizing the need for and implementing support services for victims of sexual abuse and

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interventions with perpetrators of sexual violence. Over several decades these practices, which have included close cooperation with victim advocates, law enforcement, prosecutors, courts, and specialized treatment providers, evolved into a system where high risk offenders were referred for civil commitment. Institutional treatment was provided. Lower-risk offenders were placed in the community for treatment under court-mandated supervision.

16. Actuarial risk assessment tools have been developed which provide a meaningful level of accuracy, distinguishing high-risk from low-risk offenders. For several years in Washington, these tools are required, by statue, to be used by law enforcement or corrections officials in assigning notification levels for those on the sex offender registry.

17. Notification levels thus determined provide a meaningful measure to distinguish those on the registry who are at highest risk of reoffense from those at the lowest risk.

18. Law enforcement agencies use these notification levels in making the public aware of registered sex offenders in their communities. A sensible and empirically-based system has been implemented where high-risk (Level 3) persons are subject to general notification. Moderate risk (Level 2) persons are subject to a lower level of notification.

19. Lower risk (Level 1) offenders are statistically at lower risk of committing new crimes of any kind than any other group of persons with felony convictions. While they have treatment needs and measurable risks, these are best addressed by having them pursue responsible lives, which include employment, stable housing and social connections, while continuing to be mindful of the need to avoid opportunities or temptations to engage in problematic or abusive sexual behavior.

20. A citizen has requested identifying information on all persons registered as sex offenders

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in King County. This person presumably intends to release this information to the general public.

21. It is in our communities' best interest to encourage and promote desistance from criminal and sexually deviant behavior by encouraging and supporting Level 1 persons on the registry to pursue responsible lives by limiting the release of personal information that would hinder this process and could invite vigilantism

We declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Paul Spizman, Ph.D., CSOTP
WATSA President

5/19/15 Shoreline WA
Date and Place Signed

Jennifer Wheeler, Ph.D., CSOTP
WATSA Past-President

Date and Place Signed

Michael O'Connell, Ph.D., MSW, CSOTP
WATSA Board Member

Date and Place Signed

Richard L. Packard, Ph.D.
WATSA Past-President, 2001-2005

Date and Place Signed

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WATSA President

Date and Place Signed

Jennifer Wheeler, Ph.D., CSOTP
WATSA Past-President

5/19/2015, Seattle, WA
Date and Place Signed

Michael O'Connell, Ph.D., MSW, CSOTP
WATSA Board Member

Date and Place Signed

Richard L. Packard, Ph.D.
WATSA Past-President, 2001-2005

Date and Place Signed

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WATSA Past-President

Date and Place Signed

Michael O'Connell, Ph.D., MSW, CSOTP
WATSA Board Member

5-19-15 Lynnwood, WA
Date and Place Signed

Richard L. Packard, Ph.D.
WATSA Past-President, 2001-2005

Date and Place Signed

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WATSA President

Date and Place Signed

Jennifer Wheeler, Ph.D., CSOTP
WATSA Past-President

Date and Place Signed

Michael O'Connell, Ph.D., MSW, CSOTP
WATSA Board Member

Date and Place Signed

Richard L. Packard, Ph.D.
WATSA Past-President, 2001-2005

Bainbridge Island, WA
5/19/15
Date and Place Signed

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EXHIBIT 15

☐ EXPEDITE
☐ No Hearing Set
☑ Hearing is Set
Date: July 17, 2015
Time: 11:00 AM
Judge/Calendar: Hon. Carol Murphy / Civil Calendar

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

JOHN DOE P, JOHN DOE Q, JOHN DOE R, and JOHN DOE S, as individuals and on behalf of those similarly situated,

Plaintiffs,

v.

THURSTON COUNTY, a municipal organization, and its departments THURSTON COUNTY PROSECUTING ATTORNEY and THURSON COUNTY SHERIFF

Defendants,

v.

DONNA ZINK, a married woman,

Requestor.

No. 15-2-00094-0

DECLARATION OF MAIA CHRISTOPHER

I, Maia Christopher, declare as follows:

1. I am the Executive Director of the Association for the Treatment of Sexual Abusers (ATSA). ATSA is an international, multi-disciplinary organization that utilizes research, education, public policy analysis and advocacy, and community-based strategies to prevent

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sexual abuse. Through the promotion of effective assessment, treatment and management of individuals who have sexually abused or are at risk to abuse, ATSA strives to enhance community safety, reduce sexual recidivism, protect victims and vulnerable populations, and transform the lives of everyone affected by sexual abuse.

2. As an international organization, ATSA serves as a meeting point for numerous professional disciplines that work to prevent sexual abuse. Professionals and experts in the fields of criminal justice and criminology, mental health, law enforcement, public health, juvenile justice, child welfare and protection, restorative justice, corrections, probation and parole, and victim advocacy both help to inform and seek out ATSA's opinions and positions on research, best practices, and policy regarding sex offender treatment and management. ATSA strives to be a conduit for this information and assist policy makers in developing and implementing best practice standards for sexual offender policies that maximizes community safety, holds offenders accountable, and facilitates the prevention of sexual abuse.

3. Prior to joining ATSA, I spent 19 years providing treatment to incarcerated individuals who had committed violent offenses both in Canada and the United States. I am well versed in the literature surrounding sex offender treatment and public access to sex offender registration information. I have provided training regarding treatment and prevention of sexual abuse at national and international conferences such as ATSA's Annual Research and Treatment Conference, the National Sexual Assault Conference, and the National Center for Missing and Exploited Children Safe to Compete summit. As well, I serve as the Vice Chair of the National Sexual Violence Resource Center advisory committee, and a peer reviewer for the National Center on Sexual Behavior of Youth. As well, I serve on the advisory committee of PreventConnect, a project of the California Coalition Against Sexual Assault and I am the Past President of the National Coalition to Prevent Child Sexual Abuse and Exploitation,

4. Given the devastating impact that sexual abuse has on individuals and communities, it is ideal that the strategies being implemented to manage the behaviors of individuals who have perpetrated sexual abuse are informed

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by emerging research, evaluation and best practices to bolster public safety. Often times however, in an attempt to decrease the harm caused by individuals who offend, policies are put into practice that have consequences that do not wholly support the goal of maximizing community safety. Sex offender notification laws and level systems are both examples of policies that have had unintended negative consequences.

5. The intent and purpose of a level system is to enhance community safety by differentiating between offenders who present a high, moderate, or low risk for re-offense. This then allows professionals to identify an appropriate level of supervision, registration, and notification which enables better allocation and use of limited resources; provides more informative and recognizable information to the public about the individuals who offend within their communities; and provides guidance for law enforcement and registries – identifying those individuals who should receive more attention and why.

Overview of Sexual Offender Level Systems

6. There are two types of level systems for sexual offenders---conviction based systems and risk assessment based systems. Although preliminary, research to date has shown that conviction based systems are neither accurate nor effective for identifying a sexual offender's risk for re-offense. This is due to factors such as the plea bargaining process, which can result in a conviction that does not encapsulate the actual nature of the offense (i.e. rape being pled down to assault), as well as offenders often being placed in higher risk categories due to the name of the conviction that may not reflect the actual behavior which was perpetrated. Thus, the resulting net widening effect of conviction based systems does not allow for adequate differentiation between higher risk and lower risk offenders in a meaningful way. Conviction based systems also typically overestimate or underestimate an offender's risk due to the variability of sentencing practices; are far more likely to obscure important differences among registered offenders; and endorse a "one size fits all" approach for classification of sexual offenders (Ackerman et al., 2011; Tabachnick & Klein, 2011).

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7. Washington is one of approximately 25 states that has developed a process to determine an offender's risk level by utilizing validated risk assessment tools to make effective treatment and management decisions for high to low risk sexual offenders (Daly, 2008). The use of an actuarial risk assessment instrument to make decisions such as these is supported by the general criminogenic and risk assessment literature (Andrews & Bonta, 2006; Andrews & Bonta, 2007; Hanson et al., 2009). A risk assessment based system assists law enforcement and registries to appropriately allocate their limited resources, energy, and time to the higher risk offenders, while also providing useful information to the community on whom they should be aware of and why. This process helps maximize community safety as well as empowering the community with information to help prevent reoffending.

8. In Washington, sexual offenders are assessed by the End of Sentence Review Committee (ESRC) and placed within one of three categories: Level 1 = low risk of sexual re-offense within the community at large; Level 2 = moderate risk of sexual re-offense within the community at large; and Level 3 = high risk of sexual re-offense within the community at large. ESRC utilizes the Static-99R (Hanson & Thornton, 1999; Helmus, Thornton, Hanson & Babchishin, 2012) for all adult sexual offenders and the Washington State Sex Offender Risk Level Classification Tool for juvenile sexual offenders. The Static-99R is the most commonly used and most well-researched actuarial risk assessment instrument in the world and has demonstrated good predictive accuracy in multiple validation studies over the past several years. The utilization of empirically validated risk instruments to differentiate between offender groups, such as Washington's level system, increases the effectiveness of supervision and management of those offenders. Risk assessment procedures have consistently been shown to improve the accuracy of predictions by setting thresholds for decision-making and by standardizing factors that professionals readily recognize as key diagnostic indicators. Additionally, use of validated risk assessment instruments increase the odds of successfully prognosticating future behavior (Cullen et al., 2009).

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Risk and Recidivism in Sexual Offenders

9. Some sexual offenders are going to reoffend and steps should be taken to do everything possible to prevent that from happening. However, sexual offenders are a diverse population with varying levels of risk and rates of re-offense reflect these differences. Research has demonstrated that recidivism rates differ based upon the type of sexual offending, the offender's age at time of release, and the length of time the offender has been offense free in the community. A 2004 study showed that:

- Incest offenders recidivated at a rate of 6% after 5 years, 9% after 10 years and 13% after 15 years
- Adults who offender against adults recidivated at a rate of 14% after 5 years, 21% after 10 years and 24% after 15 years; and
- Individuals who offended against boys recidivated at a rate of 23% after 5 years, 28% after 10 years and 35% after 15 years.
- When all sexual offender populations were combined, recidivism rates were similar to those of rapists: 14% after 5 years, 20% after 10 years and 24% after 15 years.
- Sexual offenders with prior sex offenses also had twice the rate of recidivism than first time offenders, while older offenders (50+ at time of release) recidivated at half the rate of younger offenders (Harris & Hanson, 2004).

10. It is also important to note that several studies have shown that the majority of new sexual assaults resulting in arrest are not committed by registered sex offenders, rather by first time offenders (Bureau of Justice Statistics, 2003; Sandler, Freeman, & Socia, 2008). Arrest data naturally underestimates true re-offense rates because some crimes are never detected or reported to authorities; however, the available research suggests that after two decades the majority of convicted sex offenders have not sexually recidivated.

The Impact of Undifferentiated Identification of Sex Offenders to the General Public

11. However, when all individuals are treated in the same manner (i.e. assessed only by the legal designation of their offense or all individuals receive the same level of notification), it is difficult for members of the community to distinguish

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between those offenders most at risk of offending from lower risk offenders. Additionally, evidence is clear that more than 80% of offenses are committed by perpetrators known to the victim (Snyder, 2000). Although all forms of notifications have some risk that the survivors of sexual abuse can be identified by their relationship to the perpetrator, the risk to the survivor continues to rise as more offense categories and risk levels are added to the field of notification.

12. Further, all offender populations face re-entry difficulties and these problems are often exacerbated for registered sexual offenders. Employment, social bonds, and housing stability increase the likelihood of successful reintegration for criminal offenders into our communities (Kruttschnitt, Uggen, & Shelton, 2000; Petersilia, 2003; Uggen, 2002; Uggen, Manza, & Behrens, 2004; Willis & Grace, 2009), while obstacles to reintegration reduce investment in conformity and increase the likelihood that a criminal offender will resume a life of crime (Hirshi, 1969; Travis, 2005). Therefore, social policies, such as overly broad community notification, tend to remove individuals from prosocial and positive supports, as well as employment and housing opportunities, thus potentially aggravating risk factors for lower risk offenders who may otherwise have successfully reintegrated into the community. These policies are unlikely to be in the best interest of public safety.

13. Current research strongly indicates that individuals who sexually offend are an extremely heterogeneous population who differ in their risk to offending, their potential of reoffending, and the diversity of their criminal experiences. An in depth psychosocial evaluation is important for individuals with more than a low risk to reoffend as the psychosocial evaluation is conducted through an objective process of gathering behavioral, medical, legal and psychological information that provides a basis for the identification of the individual's specific risk-relevant propensities. In addition to helping to reduce and manage the risk factors through treatment, this information should attune supervision areas and strategies. Details from treatment are often shared with other professionals involved in the management of the individual (Marshall, Marshall, Serran, & Fernandez, 2006). This may include information such as the client's attendance, level of participation and progress, and

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information they disclose over the course of treatment (e.g., substance use/abuse, unstable relationship dynamics, attendance at high risk locations, general information about what they are addressing in treatment). As well, it is common to share information related to the clients assessed level of risk, their identified risk factors and risk management plan. Although the sharing of information is important in working with a forensic population, it is also critical for clinicians to offer the client some degree of privacy and confidentiality to retain integrity in the therapeutic relationship and process. Unless it is related to imminent risk, there are many issues and specific details clients will disclose and discuss in therapy that either do not need or may not need to be shared (Ellerby, Gress and Yates, in press).

14. To maximize community safety, treatment and management of offenders is enhanced by providing more intensive treatment services to those individuals at the highest risk of reoffending as determined by an empirically validated risk assessment tool and an assessment of the offender's individualized risk factors and community re-entry needs to ensure basic lifestyle stability. Conversely, overly broad application of strategies such as community notification of all offenders, including individuals assessed as having lower potential to reoffend, creates significant difficulties for those lower risk offenders to successfully re-integrate into the community in a manner which maximizes, rather than compromises, community safety.

15. The impact of notification laws are also felt by the families of convicted sexual offenders. Several studies have identified a variety of consequences for the families of registered sex offenders (RSOs) with the primary concerns related to RSO obtaining employment and for the family to maintain stable housing. Those who lived with an RSO were more likely to experience threats and harassment by neighbors. (Farkas & Miller, 2007; Levenson & Tewksbury, 2009). As noted, these factors tend to make it more difficult for individuals to successfully reintegrate into the community and may contribute to an increased risk of re-offense which has the unintended consequence of weakening, rather than strengthening, community safety.

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16. Paradoxically then, the overly broad identification of sexual offenders to the community may be meant to enhance community safety but may actually contribute to factors that may lead to increased technical violations and new offences. For example, research by Prescott & Rockoff (2008) indicated that while some first time offenders are deterred by notification sanctions, the imposition of community notification on convicted offenders *ex post* may make them more likely to recidivate. Letourneau et al (2010) researched whether South Carolina's sex offender registration and notification (SORN) policy was associated with a general deterrent effect on adult sexual crimes and the results of this study indicated that the 1995 SORN policy was associated with a general deterrent effect on the commission of first-time sexual crimes. However, there was no indication of deterrence after South Carolina implemented its online sex offender registry in 1999, indicating that online notification did not influence general deterrence of adult sexual crimes.

Conclusion

17. Research to date suggests that broad-based community notification for all sexual offenders is not supported and often has the unintended consequences of creating obstacles to community reentry that may actually compromise, rather than promote, public safety. Empirically derived risk assessment models based on factors known to correlate with recidivism should be used to identify those who pose the greatest threat to public safety. In this way, the public is better informed about offenders likely to commit new sexual offenses. At the same time, collateral consequences which create destabilization and potentially aggravate risk factors for lower risk offenders could be minimized leading to enhanced community safety.

18. Washington's current risk assessment based level system and community notification practices adhere to empirically guided practices, resulting in a more informed public and enhanced protection for the community while also

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minimizing the collateral consequences of increasing the risk of reoffending for lower risk offenders. Generalized release of the names, residential addresses and other information related to sexual offenders classified as low risk to reoffend would likely cause harm to those individuals by making it more difficult for them to integrate safely into a community and would not advance public safety or government interests.

I declare under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct.

Maia Christopher

19-May-15 Beaverton, OR
Date and Place

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EXHIBIT 16

☐ EXPEDITE
☐ No Hearing Set
☑ Hearing is Set
Date: July 17, 2015
Time: 11:00 AM
Judge/Calendar: Hon. Carol Murphy / Civil Calendar

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

JOHN DOE P, JOHN DOE Q, JOHN DOE R, and JOHN DOE S, as individuals and on behalf of those similarly situated,

Plaintiffs,

v.

THURSTON COUNTY, a municipal organization, and its departments THURSTON COUNTY PROSECUTING ATTORNEY and THURSON COUNTY SHERIFF

Defendants,

v.

DONNA ZINK, a married woman,

Requestor.

No. 15-2-00094-0

DECLARATION OF NICOLE PITTMAN

I, Nicole Pittman, declare as follows

1. My name is Nicole Pittman, Esq., and I am a leading national expert on the application of sex offender registration and notification laws to children. My research, publications,

extensive interviews with juvenile registrants, and testimony before numerous legislatures and Congress are all directed at the application in practice, effect, and impact of sexual offender registration on children. I attach to this declaration as Appendix 1 a copy of my CV, detailing my qualifications.

2. The harm suffered by victims of sexual assault, as well as their family members and communities, can be harrowing. People who commit sexual harm should be held accountable. However, in addition to holding people accountable, sex offender registration and notification laws were also intended to reduce sexual re-offense, and ensure the overall safety of communities. But, as research shows sex offender registration and notification laws, especially when applied to children, harm those youth in a myriad of ways while doing nothing to further the public safety objectives for which they were designed.

The Irreparable Harm of Sex Offender Registration and Notification

3. In May, 2013 Human Rights Watch published a report entitled "*Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US*,". This report is based primarily on my research and represents the first examination of the collateral consequences of registration and notification for youth sex offenders. During 16 months of investigation as a researcher for Human Rights Watch, I interviewed 281 youth registrants, across 20 states, as well as hundreds of offenders' family members, defense attorneys, prosecutors, judges, law enforcement officials, experts on the topic, and victims of child-on-child sexual assault. With this research we gained an in-depth picture of the problems associated with youth registration, a subject that for the most part has been overlooked in policy and legislation until now.

4. Research tells us that community notification (publicizing information about persons on sex offender registries) is one of the most onerous and harmful aspects of registration from the perspective of the youth offender. Through interviewing hundreds of juvenile

registrants in the United States, it is clear that as soon as an offender's personal information is made available to the public, the collateral consequences of registration become much more harmful, including increased likelihood of unemployment, homelessness, and stigmatization. (See Human Rights Watch, *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US* at 7 (May 2013) (Hereinafter *Raised on the Registry*).

5. When first enacted in 1994, community notification laws were initially reserved for offenders classified as having a high risk of reoffending. If used to specifically monitor high risk offenders, community notification *may* effectively ensure public safety, however not enough research has been conducted to validate this presumption. The most recent study assessing the practical and monetary benefits of community notification found that in New Jersey, community notification has no demonstrable effect in reducing sexual re-offense (Zgoba, 2008). I posit that the benefit of community notification is outweighed by the collateral consequences that occur when youth and other low risk offenders are subject to it. Numerous studies, including my 2013 report, have documented these consequences. As it relates to adult registrants, Tewksbury (2005) found that social stigmatization, loss of relationships, employment and housing, and both verbal and physical assaults were experienced by a significant number of registered sex offenders; Zevitz and Farkas (2000) found that a majority of adults on sex offender registries reported negative consequences, such as exclusion from residences, threats and harassment, emotional harm to their family members, social exclusion by neighbors, and loss of employment.

6. A key problem associated with the online publicity of registration information, is that once public data like this has been mined and republished elsewhere on the web, it is retained even when an individual is no longer required to register. Companies such as Offendex (also known as The Official Sex Offender Archive©) and HomeFacts (also

known as RealtyTrac Holdings, LLC™) make all current and archived state sex offender registration information publicly available, thus preserving it. Private companies like these are monetarily invested in the mining, preparing, and distributing of registrant data to create their own searchable web-based sex offender registries and transfer all state sex offender registration information, including registrant pictures and addresses, to their websites, iPhone/Droid Android Applications, or Facebook, to be searched freely by anyone. These companies are under no duty to correct or update the information, meaning that individuals who are no longer registered offenders remain searchable on these websites.

This misuse of information sheds light on another inadequacy of community notification policies that stems from the fact that the vast majority of victims of child sexual abuse know the person who abused them. Because of this, one of the central justifications for sex offender notification laws – the need to inform the public of the whereabouts of registrants – is misguided (Wright, R. G. (2008). Sex offender post-incarceration sanctions: Are there any limits? *New England Journal on Criminal and Civil Confinement, 34*(1), 17–50.)

7. Registration and notification effects almost every aspect of a developing child's life. The public label of "sex offender," "child molester," or "sexually violent predator" can cause profound damage to a child's development and self- esteem. Stigmatization can lead to unwarrented fear or mistrust by others, suspicion, rejection, isolation from family and friends, harassment, humiliation, and even violence. These policies risk labeling adolescents and children as "sex offenders" for life, making it much more difficult for them to develop safe, healthy, and productive lives. There is little evidence that these policies protect children from sexual abuse. Professionals working with younger populations find that a more balanced approach emphasizing the strengths of the adolescent or child while addressing the specific controls needed to maintain a safe

environment is the most effective way to ensure that community safety concerns are addressed. If treated with methods that are developmentally appropriate, the prognosis for living a healthy and productive life is much higher because most children and adolescents who sexually abuse do not continue that abuse into adulthood (Bremer, J. (2006). Protective factors scale: Determining the level of intervention for youth with harming sexual behavior. In D. S. Prescott (Ed.), *Risk assessment of youth who have sexually abused: Theory, controversy, emerging strategies* (pp. 195–221). Oklahoma City, OK: Wood 'N' Barnes.)

In interviewing 281 juvenile registrants over the past two years, 250, or roughly 85%, have experienced negative psychological impacts that they attributed to their status as a registrant, separate from the fact of their adjudication, such as depression, a sense of isolation, difficulty forming or maintaining relationships, and suicide ideation. Nearly a fifth of those interviewed (58 people, or 19.6 percent) said they had attempted suicide; three of the registrants whose cases I examined did commit suicide. See *Raised on the Registry*.

8. Finding and keeping employment is one of the most severe challenges related to registration. See *Raised on The Registry, supra*. In numerous interviews, child registrants informed me that the registration status they received decades ago for offenses they committed as children continue to limit their job opportunities. When registration is public (and thus the employee's name and address are associated with the registrant), child registrants are significantly more likely to be fired or denied a job. See University of North Carolina Center for Civil Rights, "Juvenile Delinquency Adjudication, Collateral Consequences, and Expungement of Juvenile Records; "*Raised on the Registry*."

9. Studies show that individuals identified on public sex offender registries have difficulty securing housing, and the impact may be magnified for youth offender registrants. Of the

nearly 300 youth offender registrants whose cases I recently reviewed, a significant portion experienced homelessness as a result of the restrictions that come with being registered. See *Raised on the Registry*, at 65.

The Limited Public Safety Impact of Community Notification

10. There is little evidence that sex offender registration laws are effective in preventing future sex crimes. In contrast, there is significant evidence that sex offenders, and particularly youth sex offenders, are among the least likely to reoffend.

11. Contrary to public perceptions, evidence shows that putting youth offenders on sex offender registries and public websites overburdens law enforcement with large numbers of people to monitor, undifferentiated by their dangerousness. Detective Bob Shilling, a veteran of the Seattle Police Department who spent 20 years as a detective in the Special Victim's Unit, Sex and Kidnapping Offender Detail, stated that focusing attention and resources on an overly broad group of registrants detracts resources from the smaller number of high-risk offenders , leaving communities vulnerable to sexual abuse, creating a false sense of security, and exhausting valuable resources.. The detective said, "the most recent laws dilute the effectiveness of the registry as a public safety tool, by flooding it with thousands of low risk offenders like children, the vast majority of whom will never commit another sex offense."

12. In my opinion, generalized release of the names, residential addresses, and other information related to juvenile sex offenders and others classified as at low risk to reoffend would cause irreparable harm to these individuals and would not advance public safety or government interests. I base this opinion on a growing body of research revealing the collateral consequences of registration and community notification, as well as a dearth of evidence supporting the effectiveness of placing low-risk offenders on public registries.

I declare under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct.

Nicole Pittman

May 19, 2015 Oakland, CA
Date and Place

PITTMAN DECLARATION
APPENDIX 1

NICOLE I. PITTMAN, ESQ.

Stoneleigh Fellow & Director, Center on Youth Registration Reform
Impact Justice | 2323 Broadway | Oakland, California 94612
Direct: 5215-520-7092 | npittman@impactjustice.org

EDUCATION

Tulane Law School, New Orleans, LA
Common Law Curriculum, May 1997

Journal Experience:	Associate Editor - Tulane Law Sports Lawyer Journal
Activities:	President - Tulane Sports Law Society, Public Interest Law Foundation, Black Law Students Association, Founder- Native American Law Association
Employment:	Tulane Law School Library, Rosen House Apartment Reception Desk

Duke University, Durham, NC
Bachelor of Arts in History, May 1994

Honors:	Dean's List, Special Honors-History, Atlantic Coast Conference Academic Honor Roll
Thesis:	*Living in Three Worlds: Native Americans at Hampton Institute 1878-1923.*
Activities:	President of the Class of 1994, Black Students Association, V.P. - Native American Students Association, Duke Yearbook Sports Photographer
Athletics:	Varsity Tennis Team, Varsity Track Team
Employment:	Duke Tour Guide, Duke Information Center
Community Service:	Habitat for Humanity, Soup Kitchen

EXPERIENCE

Impact Justice — **May 2015 – Present**
Stoneleigh Fellow & Director, Center on Youth Registration Reform — Oakland, CA
Stoneleigh Fellow Nicole Pittman joined Impact Justice as the Director of the Center on Youth Registration Reform (CYRR). Her current work is aimed at making communities safer by eliminating the placement of youth on registries all together. Nicole is in the process of building the first ever national Resource Center dedicated to helping jurisdictions implement more humane policies on dealing with youth accused of sex offenses through technical, legal, and programmatic assistance. Nicole's work takes a cross-systems approach to protecting youth by collaborating with stakeholders and thought leaders working in the fields of re-entry, alternative sentencing and restorative justice.

National Council on Crime and Delinquency — **May 2014 – April 2015**
Stoneleigh Fellow & Senior Program Specialist — *Oakland, CA*
In May 2014, Nicole was awarded a three-year Stoneleigh Fellowship at NCCD to continue her 10 years of groundbreaking work to improve responses to child sexual offending behavior. Through the creation of an expert advisory body and development of an online resource center, Nicole's work at NCCD will help to foster and leverage qualitative and quantitative research and to provide technical assistance and training to stakeholders on ways to improve responses to child sexual offending behavior in the child welfare, juvenile justice, education, and criminal justice systems.

M+R Strategic Services — **February 2014 – May 2014**
Consultant — *Philadelphia, PA*
In February 2014, Nicole was hired by M+R Strategic Services to conduct intensive research to further MacArthur Foundation's *National Campaign to Reform State Juvenile Justice Systems.* Nicole is conducting extensive research to draft a memorandum for the purpose of educating Campaign staff and local advocates on areas of opportunity for juvenile sex offender registration reform in six identified states; Minnesota, Nevada, North Carolina, South Carolina, Virginia, and Wyoming.

Independent Consultant — **May 2013 – January 2014**
Consultant Advocating for Youth Affected by Sex Offender Laws — *Philadelphia, PA*

As a consultant, Nicole continued to build on her Human Rights Watch publication, "Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US," to further advocate against the inclusion of children in federal and state sex offender registration, notification, and residency laws and she will continue to advocate nationally for youth affected by sex offender laws. In spring 2013, a journalist wrote a story, Raised on the Registry - Brandon's Story, about the travel, research, advocacy, and reform work Nicole has done on this issue.

Human Rights Watch — **September 2011 – May 2013**
Senior Soros Justice Advocacy Fellow — *New York, NY*

In June 2011, Nicole was awarded the prestigious Soros Foundation Justice Advocacy Fellowship to raise awareness around the country regarding the excessively punitive effects and harmful impact of including children in sex offender registration and notification systems. During the 18 month fellowship, Nicole researched and wrote a Human Rights Watch report on the human rights violations that can stem from subjecting children (age 18 and younger) to sex offender registration, notification, and residency restrictions. The report which relied heavily on first-person testimony and interviews with child registrants from all parts of the country and entitled, "Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US" was released on May 1, 2013. Despite, the existence of the laws for nearly two decades, the report was the first examination of the collateral consequences of registration and notification for youth sex offenders. Research findings revealed that restrictions can permeate nearly every aspect of young person's life causing a cascading set of collateral consequences that severely restrict where, and with whom, youth sex offenders may live, work, attend school, and even spend time. In these circumstances, youth sex offenders are often depressed and even suicidal. Additionally, the harm suffered by victims of sexual assault, as well as their family members and their communities, can be harrowing, and tragic.

Defender Association of Philadelphia — **February 2005- Present**
Juvenile Justice Policy Analyst Attorney — *Philadelphia, PA*

Worked directly with the Chief of the Juvenile Unit, Robert Listenbee, who is now the Administrator of the US Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP). Main responsibilities included improving systemic issues both locally and nationally in the juvenile justice system. Projects range from developing challenges to the indefinite civil commitment of juveniles sexual offenders, improving direct representation, combating institutional abuse, reworking legislation, investigating and remedying Disproportionate Minority Contact, and forming guidelines for improving the treatment of Direct-File Juveniles/juveniles charged as adults.

Primary responsibilities include collaborating with other attorneys, forensic psychology experts, and juvenile advocates, working to make lasting systemic changes in the juvenile justice system and juveniles sentence to life without parole (JLWOP). Most recently, I have researched, written, and spoken widely on defending the "juvenile sexual offender." Training attorneys on how to use science to defend and protect the rights of juveniles charged with sexual offenses upon arrest, during adjudication, disposition, and sex offender civil commitment proceedings. Deemed as a national expert on juvenile sexual offending, I have been consulting and advising lawyers, policymakers, legislators, and judges across the nation on how to challenge the new Adam Walsh Child Protection and Safety Act's Sex Offender Registration & Notification Act (SORNA) as it relates to juveniles.

National Institute of Justice (NIJ) — **December 2006 – Present**
NIJ Consultant on Sexual Offending — *Washington, DC*

Selected by the National Institute of Justice (NIJ) as a national consultant and expert in the area of sexual offending. Consultants review grant proposals and participate in a panel discussion with other attorneys, forensic psychologist, policy analyst, etc, offering constructive criticism and useful recommendations for improvement in the area of sexual offending.

Center for Better Living/Serenity House — **July 2001 – July 2003**
Intake Coordinator/Case Manager — *New Orleans, LA*

Intake Coordinator for a mental health facility designed to treat "dually diagnosed" persons who suffer from both chronic mental illness and drug addiction. The intake coordinator educates, assesses, and talks with each prospective client to properly place each client in the most adequate treatment program. The Case Manager works with the clients who as they prepare to transition out of the group home and into an independent living situation. In order to transition smoothly clients usually require some assistance with housing situations, life skills, coping mechanisms, budgeting and employment.

Juvenile Justice Project of Louisiana (JJPL) — **October 2000 – July 2001**
Staff Attorney — *New Orleans, LA*

JJPL staff attorneys vow to steadfastly defend children in the juvenile justice system and to provide post-disposition advocacy for children incarcerated in the juvenile prisons. The non-profit staff fights for the legal rights of children through legal pleadings, trial advocacy, forming relationships with clients and their families, and community outreach. Specific duties of this attorney are to act as lead attorney for JJPL's Community-Based Representation Project.

Orleans Parish Indigent Defender — **February 1999 – October 2000**
Juvenile Court Public Defender — *New Orleans, LA*

Working as a Public Defender in New Orleans Juvenile Court predominately assigned to Judge Ernestine Gray's section doing juvenile neglect and abuse cases. Public defense experience demands representing children or parents in neglect & abuse proceedings, including through the termination of parental rights phase, defending children in juvenile delinquency matters, and some criminal defense of adults in Criminal District Court. Judge Ernestine Gray's court is currently being developed into a national "model court" with the assistance and training from the National Juvenile and Family Court Judges Council. As a model court Judge Gray's team will be an exemplary courtroom used to train other courts around the world.

New Orleans Pro Bono Project — **October 1997 - February 1999**
Program Assistant/Staff Attorney — *New Orleans, LA*

Recruits volunteer attorneys and meets with clients. Screens indigent client cases for legal merit. Acts as a liaison between volunteer attorneys and the clients. Produces a newsletter for the Project called the *Pro Bono Press*.

Metropolitan Area Committee (MAC) — **Fall 1998**
Metro Leadership Forum Participant — *New Orleans, LA*

Selected as a potential and emerging community leader to participate in the city's most prestigious leadership forum. The forum educates attendees about the criminal, political, social, and civic composition of New Orleans.

Family & Forensic Services — **August-October 1997**
Capital Punishment Mitigation — *New Orleans, LA*

Interviewing juvenile clients charged with First Degree Murder. Compiling and collecting mitigating circumstances about the child-defendant's life to be presented in the sentencing phase, attempting to avoid a Death Penalty Sentence.

National Association of Professional Baseball — **May-August 1996**
Legal Intern for Office of General Counsel — *St. Petersburg, FL*

Law Clerk for the General Counsel of Minor League Baseball located in Florida. Tasks included writing briefs and doing research on the corporate structures of baseball ownership.

PROFESSIONAL AWARDS

FELLOWSHIP AWARDS

- **2011 Soros Senior Justice Advocacy Fellowship**
- **2014 Stoneleigh Fellow**
- **2014 Opportunity Agenda Communications Institute Fellow**

HONORS

- **National 2010 Juvenile Defender Center Robert Shepherd Jr. Leadership Award of Excellence in Juvenile Defense;** Awarded October 15, 2010.Given to one person each year for outstanding dedication and advocacy in the field of juvenile defense and commitment to fulfilling the promise of In re Gault, 387 U.S. 1 (1967). NJDC is a national organization that ensures excellence in juvenile defense and promotes justice for all children. Nicole was chosen for this work for her work on behalf of children accused of sexual offenses.
- **2013 Distinguished Service Award, Association for the Treatment of Sexual Abusers (ATSA);** Awarded November 1, 2013. The Association for the Treatment of Sexual Abusers (ATSA) awarded Nicole with the "Distinguished Service Award" at the ATSA's 32nd Annual Research and Treatment Conference in Chicago, Illinois on November 1, 2013. ATSA is an international, multi-disciplinary organization dedicated to preventing sexual abuse through research, education, and shared learning. Each year one award winner who has produced seminal work in the field is chosen by a panel of distinguished researchers. Nicole is the first attorney to ever receive this award.
- **2014 Opportunity Agenda Communications Fellow Residency;** Selected to join a cohort of 16 national leaders in the criminal justice field to receive comprehensive training on a variety of communications skills, including framing and narrative development, utilizing public opinion and media research to influence language and messaging, and on-camera interview training to advance existing advocacy efforts.

PROFESSIONAL CERTIFICATIONS & TRAININGS

- Certified *Domestic Mediator*
- Certified *Court Appointed Special Advocate*
- *Measuring Program Outcomes,* sponsored by the Center for Non-Profit Resources, New Orleans, LA (Fall 1998)
- *10th Annual Managing for Excellence,* sponsored for Non-Profit Resources, New Orleans, LA (January 1999)
- *National Association of Pro Bono Coordinators Conference,* Asheville, NC (Spring 1998)
- National Association of Drug Court Professionals, *1st Annual Juvenile & Family Court Drug Training Conference,* Phoenix, AZ (January 2000)
- National Institute for Trial Advocacy, *Rocky Mountain Child Advocacy Training Institute,* Denver, CO (May 2000)
- National Council of Juvenile & Family Court Judges, Model Court Training (1999-2000)
- National Association of Drug Court Professionals, *Mediation & Family Group Conferencing Training,* San Jose, CA (Summer 2000)
- 4th Annual National Juvenile Defender Leadership Summit, October 2000. Houston, TX
- Philadelphia Health Management Corporation, Certification training – Treating Sexually Aggressive Children and Adolescents (Spring 2006)
- 9th Annual National Juvenile Defender Leadership Summit, October 2005. Los Angeles, CA.
- 25th Annual Association for the Treatment of Sexual Abusers (ATSA)Conference, Chicago, Illinois (September 2006)
- 3rd Annual Sex Offender Commitment Defender Association (SOCDA) Conference, Chicago, Illinois (September 2006)
- 10th Annual National Juvenile Defender Leadership Summit, October 2006. Washington, D.C.

PROFESSIONAL PRESENTATIONS

- **National Organization of Women (NOW) – Women of Color and Allies Summit.** "The Burden of Criminal Justice on Women of Color." Philadelphia, PA. March 18, 2006.
- **Pennsylvania Bar Institute CLE Training.** "How to Try a Rape: Chapter 7 – Understanding Act 21 As it relates to your Juvenile Clients." Philadelphia. May 11, 2006.
- **9th Annual National Juvenile Defender Leadership Summit Presenter** – "Decriminalizing the Juvenile Sex Offenders." October 2005. Los Angeles, CA.
- **10th Annual National Juvenile Defender Leadership Summit Presenter** – Co-presented with Forensic Psychologist Robert A. Prentky, Ph.D. "Inherent Limitations in Juvenile Sex Offender Risk Assessment Instruments," October 2006. Washington, D.C.

- **10th Annual National Juvenile Defender Leadership Summit Presenter** – Co-presented with Forensic Psychologist Robert A. Prentky, Ph.D. "Challenging the Involuntary Civil Commitment of Juvenile Sex Offenders," October 2006. Washington, D.C.
- **The 2006 Pennsylvania Conference on Juvenile Justice** – Professional Caucus – "Act 21: Civil Commitment of Juvenile Sex Offenders," November 2006. Harrisburg, PA
- Soros/Open Society Institute – Legal Responses to Sex Offenses and Offenders. January 25, 2007. NY, NY.
- **Mississippi Juvenile Defender Training Seminar** – "Defending Juvenile Sexual Offenders." March 9, 2007. Mississippi College School of Law, Jackson, MS
- **Mississippi Juvenile Defender Training Seminar** – "Implications of the Adam Walsh Act: Protecting your Juvenile Client's Future." March 9, 2007. Mississippi College School of Law, Jackson, MS.
- **Pennsylvania Juvenile Defender Statewide Training** – "Keeping Your Clients Away from Act 21: Juvenile Sex Offender Civil Commitment." April 13, 2007. Mars, PA.
- **Louisiana Trial Advocacy Training for Juvenile Regional Services** – "Defending the Juvenile Charged with a Sexual Offense." - July 26- 29, 2007. New Orleans, LA
- **Cook County Public Defender Training** "The Adam Walsh Act as it relates to your client charged with a sexual offense." - September 6-7. Chicago, Ill
- **National Juvenile Defender Center Leadership Summit** – "Sex, Lies, and the Polygraph": Workshop - October 19, 2007. Portland, OR
- **National Juvenile Defender Center Leadership Summit** "Dispelling the Myth of a Panic Prone Public: The Adam Walsh Act and Juvenile Sex Offender Legislation": Workshop - October 20, 2007. Portland, OR
- **National Juvenile Defender Center Leadership Summit.** "Juvenile Sexual Offending": Plenary Session - October 20, 2007. Portland, OR
- **Association for the Treatment of Sexual Abusers** - Partners, Policies and Practices: Making Society Safer, October 31 –November 3, 2007 San Diego, CA.
- Sex Offender Civil Commitment Defender Association - November 3-4 San Diego, CA
- **Pennsylvania Conference on Juvenile Justice** –"Legal Consequences of Juvenile Sexual Offending" - October 31– November 2, 2007 Harrisburg, PA.
- **National Legal Aid & Defender Association Annual Conference** – Leading the Way Toward Justice& Equality. "Decriminalizing the Juvenile Sexual Offender." November 10, 2007. Tucson, AZ.
- **Public Defender Service of the District of Columbia's 43rd Annual Deborah T. Creek Criminal Practice Institute** – "The Adam Walsh Act as it relates to your juvenile client charged with a sexual offense." – November 17, 2007. Washington, D.C.
- American Injustice: Changes in Sex Offender Legislation under the Adam Walsh Act. **Defender Association of Philadelphia.** December 18, 2007. Philadelphia, PA
- **Community College of Philadelphia's 9th Annual Law and Society Symposium.** "School to Prison Pipeline: The Emergence of Violence in Adolescence." February 26, 2008.
- **Community College of Philadelphia's 9th Annual Law and Society Symposium.** "Juvenile Life without Parole in Pennsylvania." February 26, 2008.
- **Women and Law: 9th Annual Law and Society Symposium. Community College of Philadelphia.** February 26, 2008.
- **Cook County Public Defender Training Part II-** "The Adam Walsh Act as it relates to your client charged with a sexual offense." – March 7, 2008. Chicago, Ill
- **The Juvenile Justice Alliance of Greater Philadelphia.** "Changes in Sex Offender Legislation under the Adam Walsh Act." March 18, 2008. Philadelphia, PA.
- **Mississippi Juvenile Defender Training Seminar** – "Juvenile Sexual Assault Defense Training." April 11, 2008. Mississippi College School of Law, Jackson, MS
- **Pennsylvania Juvenile Defender Statewide Training** – "The Adam Walsh Act and the Juvenile Sexual Offender." April 18, 2008. Mars, PA.
- **Pennsylvania Association of Criminal Defense Lawyers (PACDL) 2008 Annual Meeting.** "Updates on sex offender legislation." April 25, 2008. Harrisburg, PA.
- **National Legal Aid & Defender Association – American Counsel of Chief Defenders (ACCD) Spring Meeting 2008** – "The Adam Walsh Act." May 15-17, 2008. San Antonio, Texas

- **National Association of Attorneys General (NAAG) 2008 Summer Meeting** – Implementing the Adam Walsh Act as it relates to juveniles. June 17, 2008. Providence, Rhode Island.
- **Rutgers-Camden School of Law Seminar on "Defending Juveniles Accused of Sexual Offenses."** June 30, 2008
- **Midwest Juvenile Defender Summit** – "Decriminalizing the Juvenile Sexual Offender: ways to attacks psychosexual evaluations, the intent element, civil commitments, and other defense arguments." July 17-18, 2008. Madison, Wisconsin.
- **Midwest Juvenile Defender Summit** – "Using Adolescent Brain Development and Trauma Research to Challenge Statements of Victims and clients." July 17-18, 2008. Madison, Wisconsin.
- **Midwest Juvenile Defender Summit** – "Changes in Sex Offender Legislation under the Adam Walsh Act." July 17-18, 2008. Madison, Wisconsin.
- **National Association of Criminal Defense Attorneys (NACDL)** – Juveniles and the Adam Walsh Act. August 1, 2008. Milwaukee, Wisconsin.
- **Child Advocacy Unit of the Defender Association**- SORNA Training. Thursday, September 4, 2008. Philadelphia, PA.
- **Congressional Black Caucus' Annual Legislative Conference.** "The Challenges of Criminal Justice Reform under a New Administration: Juvenile Justice, LWOP, Gun Violence & Police Accountability." Friday, September 26, 2008. Washington, DC.
- **Cumberland County Bench Bar Conference.** October 15, 2008: Carlisle, PA
- **Association for the Treatment of Sexual Abusers 27th Annual Research and Treatment Conference** – Teamwork in Trying Times: Improving Our Responses to Sexual Abuse. "The Adam Walsh Act's Sex Offender Registration & Notification Act: Clinical, Legal, ad Practical Implications and Strategies for Implementation and Challenge. Tuesday, October 21 – Thursday, October 23, 2008. Atlanta, GA.
- **12th Annual National Juvenile Defender Leadership Summit.** Thursday, October 23 – Sunday, October 26, 2008: New Orleans, LA
- **Juvenile Court Judges' Commission (JCJC) Conference.** November 5-7, 2008, Harrisburg, PA.
- **Southern Juvenile Defender Center Training** Friday, November 14, 2008, Tuscaloosa, Alabama
- NLADA Annual Conference "Creating Change Achieving Justice. November 19-22, 2008. Washington, DC.
- **Pennsylvania Association of Criminal Defense Lawyers (PACDL).** Sex Offenses Seminar: "The Nuts and Bolts of Megan's Law Hearings." Friday, December 5, 2008. Pittsburgh, PA.
- **US House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security Hearing** on "Sex Offender Registration and Notification: Barriers to Timely Compliance by State. March 10, 2009. Washington, DC.
- **5th Annual Ohio Juvenile Defender Summit.** "The Adam Walsh Act as it relates to Juveniles." April 5, 2009. Dayton, Ohio.
- **Juvenile Justice Alliance Presentation Series.** "The Adam Walsh Act." April 21, 2009. Philadelphia, PA
- **National Association of Criminal Defense Lawyers' 8th Annual State Legislative Network Conference.** "The Adam Walsh Act: Protecting Children or Futilely Obligating States?" August 5-7, 2009. Boston, MA.
- **The American Psychological Association's Division 48 - Society for the Study of Peace, Conflict, and Violence: Peace Psychology Division.** August 2009. Toronto, Canada (Co-presenter with Dr. Robert A. Prentky)
- **National Legal Aid and Defender Associations' Trainers Webinar** on the Juvenile Portions of the Adam Walsh Act. September 30, 2009.
- **13th Annual National Juvenile Defender Leadership Summit.** "The Adam Walsh Act." October 16-18, 2009. Denver, CO.
- **Community College of Philadelphia's 10th Annual Law and Society Symposium.** "The Overrepresentation of Minority Youth in the Justice System." March 2, 2010
- **NACDL 9th Annual State Criminal Justice Network Conference** Panel on "Juvenile Justice Issues." Washington, DC. October 8, 2010.
- **14th Annual National Juvenile Defender Leadership Summit.** "Zealously Defending Juveniles Charged with Sexual Offenses." October 16, 2010.
- **14th Annual National Juvenile Defender Leadership Summit.** Presentation with Members of the U.S. Department of Justice SMART Office on the Adam Walsh Act's Sex Offender Registration and Notification Act. October 16, 2010. Washington, DC.

- **15th Annual National Juvenile Defender Leadership Summit.** Presentation with Chief Detective of Seattle Sex Crimes Unit entitled "Challenging the harmful effect of registration on youth" October 19, 2011. Seattle, Washington.
- **Southern University Law School Symposium on Juvenile Sex Offender Registration.** Baton Rouge, LA. February 23-24, 2012.
- **Coalition for Juvenile Justice 2012 Annual Conference**, "Improving Justice Outcomes for Youth and Families Uniting Science, Policy, and Practice." Panel Presentation to the CJJ Government Relations Forum with Dr. Elizabeth Letourneau. June 23, 2012. Bethesda, MD.
- **National Association for Counsel of Children (NACC) 36th Annual Child Welfare, Juvenile, and Family Law Conference.** Co-presenter with Juvenile Law Center's Marsha Levick and Riya Shah in a session entitled "The Impact of Sex Offender Registration and Notification Laws on Youth and Constitutional Challenges to Limit their Harmful Effects." August 27, 2013. Atlanta, Georgia.
- **Colorado Juvenile Defense Conference.** *Rising to the Challenge: Zealous Advocacy For Juveniles.* October 13 – 14, 2013: University of Colorado College of Law. Boulder, Colorado.
- **National Sexual Assault Coalition 2013 Resource Sharing Project Topical Meeting Focused on Sex Offender Management.** October 30, 2013: Chicago, Illinois.
- **The 32nd Annual 2013 Research and Treatment Association for the Treatment of Sexual Abusers (ATSA) Conference.** *Shouldering Responsibility: Making Society Safer.* October 20 – November 2, 2013: Chicago, Illinois.
- ***17th Annual Juvenile Defender Leadership Summit.*** November 1-3, 2013: Scottsdale, Arizona
- **Texas Voices for Reason and Justice Annual State Wide Conference.** "United for Reform" February 21-22, 2014: Dallas, TX.
- **Oregon Criminal Defense Lawyers' Association (OCLDA) Juvenile Law Committee Conference.** April 25-26: Newport, OR.
- ***Confronting Family and Community Violence – The Intersection of Law and Psychology,* cosponsored by the American Psychological Association and the American Bar Association.** *"Violent Offender Re-entry into Society"* co-presented with Joel A. Dvoskin, PhD and Henry A. Glugacz, JD, MSW. May 1-3, 2014: Washington, D.C.
- **Youth who Sexually Offend: Registry Requirements, legal Implications, and Treatment Options in South Carolina.** September 19, 2014: Columbia, S.C.
- 2nd Annual Excellence in Juvenile Defense Conference. "Sex, School, and Status Offenses: What's Tripping up Teens Today?" October 16-17, 2014. Denver, Colorado.
- 18th Annual National Juvenile Defender Leadership Summit. October 26-28, 2014. Louisville, KY.
- **The 32nd Annual 2013 Research and Treatment Association for the Treatment of Sexual Abusers (ATSA) Conference.** Transforming Research into Practice. October 29- November 1, 2014. San Diego, CA.
- **NYU Law School Symposium on Law & Social Change.** Panel series on sex offender registration laws. April 6, 2015.
- **Harvard Law School -** Presenting along with Marsha Levick of Juvenile Law Center on Reforming Juvenile Sex Offender Registry Laws. This presentation is part of the Harvard Law Child Advocacy Program Course, called *Art of Social Change: Child Welfare, Education, and Juvenile Justice*. April 16, 2015. Cambridge, MA.
- **University of Pennsylvania's Field Center for Children's Policy, Practice & Research - National Conference, *One Child, Many Hands: A Multidisciplinary Conference on Child Welfare*,** that addresses cutting edge work and emerging issues in child welfare through a cross-systems approach. Keynote Speaker. June 12, 2015. Philadelphia, PA.

EXPERT TESTIMONY

- **Commonwealth of Pennsylvania Court of Common Pleas, Juvenile Division** - Rendered an expert on juvenile civil commitment in Pennsylvania (Act 21) – testifying in a juvenile certification hearing; **February 27-28, 2007.**
- **US House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security**. "Barriers to timely Implementation of the Sex Offender Registration & Notification Act (SORNA). **March 10, 2009.** Washington, DC.
- **House Committee on Judiciary, Louisiana House of Representatives.** "Prevention and Rehabilitation Programs for Reentry of Ex-Offenders." **September 17, 2009.** Baton Rouge, Louisiana.

- **Arizona State Legislature Federal SORNA Study Committee.** "The Impact of adopting SORNA on the State of Arizona." In June 2009, the Arizona State Legislature passed Arizona Senate Bill 1011 by emergency measure to establish a Federal Sex Offender Registration & Notification Act (SORNA) Study Committee. The purpose of the Committee is to examine the effectiveness of Arizona's current sex offender laws, study the Federal SORNA Guidelines, and the impact on Arizona if they adopt the Federal SORNA. The Committee was charged with issuing formal recommendations, on whether the State of Arizona should implement SORNA, no later than December 31, 2009. Nicole was invited by the Chairman of the Arizona SORNA Committee, Senator Linda Gray, to testify at a Special Hearing on **Wednesday, December 9, 2009** in Phoenix, Arizona. Nicole was asked to testify on pertinent aspects of Federal SORNA legislation and on how this legislation, if adopted, will impact Arizona. Based on the aforementioned research, Nicole was also asked to issue recommendations on whether the State of Arizona should adopt SORNA legislation at this time.
- **Idaho State Criminal Justice Commission.** "The Impact of adopting SORNA on the State of Idaho." In 2008, the Idaho State Legislature passed a bill to attempt to put Idaho in compliance with the Federal SORNA. Around the same time, the Governor created a subcommittee of the Idaho Criminal Justice Commission. The purpose of this subcommittee is to examine the effectiveness of Idaho's current sex offender laws, study the Federal SORNA Guidelines, and the impact on Idaho, if they adopt the Federal SORNA. Nicole was invited by the Idaho Attorney General, to testify at a Special Hearing on **Tuesday, January 12, 2010** in Boise, Idaho. Nicole was asked to testify on pertinent aspects of Federal SORNA legislation and on how this legislation, if adopted, will impact Idaho. Based on the aforementioned research, Nicole was also asked to issue recommendations on whether the State of Idaho should adopt SORNA legislation at this time.
- **New Jersey State Legislature.** "The Impact of adopting SORNA on the State of New Jersey." Nicole was invited by the New Jersey Attorney General, to testify at a Special Hearing on **Tuesday, January 19, 2010** in Trenton, New Jersey. Nicole was asked to testify on pertinent aspects of Federal SORNA legislation and on how this legislation, if adopted, will impact New Jersey. Based on the aforementioned research, Nicole was also asked to issue recommendations on whether the State of New Jersey should adopt SORNA legislation at this time.
- **Maryland State House Judiciary Hearing. February 2010.** Testified as an expert before the State House Judiciary Committee on the "Impact of SORNA Implementation on the State of Maryland."
- **Maryland State Senate Judiciary Hearing. March 2010.** Testified as an expert before the State House Judiciary Committee on the "Impact of SORNA Implementation on the State of Maryland."
- **Nevada State Legislature. March 2010**
- **Delaware Joint Legislative Committee. March 2010**
- **Montana State Legislature. February 2010**
- **Delaware State House Judiciary, March 2010**
- **Various State Legislative Committees.** Between December 2009 – April 2010, Nicole testified on the barriers to SORNA implementation before Legislative Committees in over twenty states
- **In the Matter of C.K., Petition for Post-Conviction Relief, Superior Court of New Jersey, Bergen County. May 5, 2014 –** testified as an expert, on the harmful effect of placing children on sex offender registries, in a case challenging a portion of Megan's Law as applied to juveniles.
- **In the Interest of J.B., et al.** (2014) acted as an expert in this case in which the Pennsylvania Supreme Court, ruled mandatory, lifetime sex offender registration requirement for juveniles was unconstitutional.

BAR ADMISSIONS & MEMBERSHIPS:

- **Louisiana State Bar Association**, admitted to practice 1998. Active Member.

PROFESSIONAL ASSOCIATIONS AND RELEVANT MEMBERSHIPS

- **Sex Offender Civil Commitment Defender Association,** Chair of the Juvenile Section since 2006
- **Juvenile Sexual Offender Litigation Working Group,** Chairperson since September 2006
  The Working Group was formed by the National Juvenile Defender Center in 2006 to address major policy issues as they relate to juvenile sex offender legislation, policies and legal practices. The Working Group is comprised of the following Indigent defender advocacy groups: *Defender Association of Philadelphia, Justice Policy Institute, Juvenile Law Center, National Center for Youth Law, National Juvenile Defender Center, Mississippi Youth Justice Project, Southern Juvenile Defender Center, Southern Poverty Law Center,* and *Youth Law Center.*
- **National Institute of Justice (NIJ) Consultant** Appointed to be a consultant on Sexual violence and Sexual Offending, January 10, 2007.
- **The Act 21 Advisory Committee** Appointed in 2009 to act as an advisor to the Act 21 (juvenile sex offender civil commitment) facility.

PUBLICATIONS

- Nicole Pittman and Quyen Nguyen. "A Snapshot of Juvenile Sex Offender Registration and Notification Laws: A Survey of the United States." Published October 2011.
- Nicole Pittman. *"Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the U.S."* Human Rights Watch. Published May 1, 2013.

IN PRESS

- Jones, Maggie. "Cover Story: How Can You Distinguish a Budding Pedophile from a kid with Real Boundary Problems?" New York Times Magazine July 22, 2007.
- Michels, Scott. "Should 14-Year Olds Have to Register as Sex Offenders?" ABC News Internet, August 16, 2007. http://abcnews.go.com/TheLaw/Story?id=3483364&page=4
- Sara Ganim. "Pennsylvania's version of Adam Walsh Act would list teens as sex offenders." The Patriot-News. October 27, 2011.
- John Micek. "State House to close Pennsylvania Megan's Law Loopholes." The Morning Call. December 5, 2011.
- John Keilman. "Former juvenile sex offender gets a shot at a new life." Chicago Tribune. December 27, 2011.
- David Crary. "Child-on-child sex abuse poses complex challenges." AP News, January 7, 2012.
- Emily DePrang. "Life on the List." Texas Observer. May 31, 2012.
- "Israeli Nonprofit gives Child Sex Offender 'Another Chance." The Jewish Week. July 3, 2012.
- Claire Gordon. "Travis Iousue, Sex Offender Appearing on 'Our America with Lisa Ling' tries to Restart Life." Huffington Post. August 7, 2012.
- Samantha Melamed. "New law revokes second chance for teens with sex offenses." Philadelphia City Paper. July 26, 2012.
- Samantha Melamed. Cover Story: "Run-on Sentence: An unforgiving and broken system is forcing sex offenders further to the fringes of society – and that's dangerous for all of us." Philadelphia City Paper. August 23, 2012.
- Scot Michels. "Juvenile Sex Offenders: Locked Up for Life?: Medical experts raised questions about indefinite civil commitment for troubled youths." The Juvenile Justice Information Exchange. October 1, 2012.
- Christopher Zara. "The 9-year-old pervert: Placing Children on Sex Offender Registries Has Chilling Effects, A Human Rights Watch Study Reveal." International Business Times. May 5, 2013.
- Op-ed by Nicole Pittman. "Sex offenders aren't All Monsters." The Daily Beast. May 7, 2013.
- "Raised on the Registry – Brandon's Story: as told by Nicole Pittman. Human Rights Watch Press. May 2, 2013. Available at: https://www.hrw.org/news/2013/05/02/raised-registry-brandons-story
- Emanuella Grinberg. "Report: Registry does more harm than good for teen sex offenders." CNN.com. May 1, 2013.
- David Crary. "Rights Group Seeks Halt to Placing Juveniles on Public Sex-Offender Registries." Associated Press. May 1, 2013.
- Michael Barajas. "In Texas, Juvenile Sex Offenders Get Virtual Life Sentence." San Antonio Current. May 10, 2013.

TV AND RADIO APPEARANCES

- BBC Radio at Five. Radio interview on the release of the HRW Report, Raised on the Registry. May 1, 2013.
- KPFT New Pacifica Houston. Radio interview on the release of the HRW Report, Raised on the Registry. May 2, 2013
- "Let's Talk About It." On SoundCloud Radio. Interviewed as an expert on the high-profile same-sex teen case of Kaitlyn Hunt. Kaitlyn Hunt of Indian River County is facing 15 years in prison after being charged with two felony counts of lewd and lascivious battery on a child 12 to 16 years old. That "child" was her teenage girlfriend (Kaitlyn is 18, the child is 15). Tune in as we talk to Equality Florida's Nadine Smith (eqfl.org/), lawyer and advocate Nicole Pittman (bit.ly/124zwN6) and Attorney Sabrina Puglisi (puglisilawfirm.com/) about all that is wrong with this picture. May 22, 2013. Available at: https://soundcloud.com/#letstalkaboutitradio/gay-teen-kaitlyn-is-facing-sex

OTHER INTEREST

- Photography
- Competitive track athlete trained for the 2004 Olympics
- Traveling
- Reading non-fiction, history buff
- Drawing and Painting
- Art & Music

EXHIBIT 17

SUPERIOR COURT OF WASHINGTON IN AND FOR THURSTON COUNTY

JOHN DOE P, JOHN DOE Q, JOHN DOE R and JOHN DOE S, a minor by and through his legal guardian JANE ROE S, as individuals and on behalf of others similarly situated,

Plaintiffs;

v.

THURSTON COUNTY, a municipal organization and its departments, the THURSTON COUNTY PROSECUTING ATTORNEY and THURSTON COUNTY SHERIFF

Defendant;

v.

DONNA ZINK, a married woman,

Requestor.

No. 15-2-0094-0

DECLARATION OF JANE ROE R

I, Jane Roe R, declare as follows:

1. I am over the age of 18 and a resident of Thurston County, Washington. I am competent to make this declaration.

2. I am John Doe R's stepmother and advocate. I have known John Doe R for the past 18 years and I am also in the process of legally adopting him.

3. John Doe R has autism. Because of that, his emotional development is several years behind peers of his age.

4. John Doe R was only 13 years old at the time he committed the offense that led to his conviction and registration as a sex offender. The victims were family members. He was given a SSODA sentence, and successfully completed SSODA treatment and probation.

5. John Doe R was registered in Thurston County, and was always assessed at a risk level I. He was completely compliant with the conditions of registration, and he was relieved of the duty to register a little over a year ago. He also recently successfully petitioned to have his juvenile court record sealed.

6. Since the offense, I've watch John Doe R grow to fully understand what he did. He's written a letter apologizing to the victims, acknowledging what he did and apologizing for the harm it caused them. He knows his mistake and he's fully taken responsibility for it. But he's also a different person now. It's been over 8 years and he has done everything expected of him and hasn't reoffended.

7. I've been told that a member of the public has requested all registration forms or the registration database from Thurston County. I was also told that the member of the public has requested all SSOSA and SSODA evaluations. I believe that the release of this information would cause irreparable harm to John Doe R.

8. John Doe R has struggled to find work, especially during the time he was registered. When he graduated from high school, no one would hire him. He eventually found work

for about a year, but was laid off when the company lost its contract. As a juvenile, John Doe R is eligible to seal his record and we've been told that if he seals his record, agencies that work to help young people will be able to find him jobs.

9. I firmly believe that release of John Doe R's registration records would make it even more difficult for him to get a job. We worked to get him relieved from the duty to register to improve his job opportunities, and releasing his registration records would make all of that pointless. In the eyes of the public, it doesn't matter who he is, once he's labeled as a sex offender. I've seen that even in my own workplace – we were looking for people to do outdoor cleanup, and one of my co-workers told the supervisor to "make sure there's no sex offenders in there."

10. I also believe that release of the SSODA evaluation would be harmful. As parents, we weren't even allowed to read the SSODA evaluation. We were told they were confidential medical records between the kid and the evaluator, and that the court would review them but they wouldn't be public. It seems wrong that the evaluation is so sensitive it wouldn't be released to a parent, but any person out in the public could get the evaluation without even knowing my child's name.

11. If John Doe R's records are released, I feel like he wouldn't be able to have a life, his life would be over. All he'd be is a sex offender. I understand why you'd want to track level II and level III offenders. But when you have someone who was a level I, and someone who was a juvenile when he offended, and someone who's no longer required to register and has had his court records sealed, having him be publicly identified and labeled as a sex offender is just wrong.

12. The whole point of the juvenile system has been to teach kids who make mistakes that if they do what they have to do, and learn what they have to learn, they get a second chance in life. Release of these records would take that chance away.

I declare under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct.

Jane Roe R

Jane Roe R

6-19-15

Date and Place

EXHIBIT 18

☐ EXPEDITE
☐ No Hearing Set
☑ Hearing is Set
Date: July 17, 2015
Time: 11:00 AM
Judge/Calendar: Hon. Carol Murphy / Civil Calendar

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

JOHN DOE P, JOHN DOE Q, JOHN DOE R, and JOHN DOE S, as individuals and on behalf of those similarly situated,

Plaintiffs,

v.

THURSTON COUNTY, a municipal organization, and its departments THURSTON COUNTY PROSECUTING ATTORNEY and THURSON COUNTY SHERIFF

Defendants,

v.

DONNA ZINK, a married woman,

Requestor.

No. 15-2-00094-0

DECLARATION OF JOHN CLAYTON

I, John Clayton, hereby declare as follows:

I am employed by the Juvenile Justice and Rehabilitation Administration (JJ&RA), Department of Social and Health Services (DSHS) as the Assistant Secretary and I make this declaration as such. I am over the age of eighteen and competent to testify herein. My duties include all aspects of programs and services delivered to youth and families of state committed

youth. Included in these duties is the oversight of Jeff Patnode, who is the Sex Offender Program Administrator. His primary responsibilities include the development, management and coordination of the Juvenile Justice and Rehabilitation Administration's (JJ&RA) statewide Sex Offender Program. His primary responsibilities include coordination of the statewide JRA Sex Offender Treatment and Aftercare Program. He represents DSHS on the Interagency End-of-Sentence-Review Committee for risk level classification and sexually violent predator reviews, and he also chairs the JRA Sex Offender Treatment Coordinator and Oversight Committee, and the JRA Subcommittee to the End-of-Sentence-Review Committee for community risk level classification. Additionally, he is the Vice Chair of the state's Sex Offender Policy Board.

The JJ&RA of the Department of Social and Health Services (DSHS) provides residential supervision and treatment as well as community supervision/Parole for youth that qualify for Sex Offender Parole. Additionally, the JJ&RA has been providing funding for treatment and supervision of juveniles with a registerable sex offense under the supervision of the County Juvenile Courts since the creation of the Special Sex Offender Disposition Alternative (SSODA) in the 1990s.

JJ&RA Role in the Juvenile Sex Offender Management System: The JJ&RA has played a lead role in the Juvenile Sex Offender Management System since the passage of the Community Protect Act in 1990. JJ&RA has worked closely with the Department of Corrections (DOC) and local law enforcement agencies to ensure the effective implementation of the Act, with particularly strong partnerships with local law enforcement regarding the community notification of juveniles under the supervision of the JJ&RA.

JJ&RA has understood from the beginnings of our involvement in the Juvenile Sex Offender Management System and the risk level process that Legislative intent is for public access to sex offender information is specifically linked to the level of risk that is posed to the community at large. Nearly categorically, community notification of any kind has been limited to those youth that have been assessed as either a level 2 or level 3.

The JJ&RA Juvenile Risk Level Committee was developed by and is chaired by the JJ&RA and performs initial level determination for juveniles releasing from JRA facilities, juveniles under the supervision of the juvenile courts for a registerable sex offense, and youth coming to Washington State under the Interstate Compact for Juveniles with a registerable sex offense. The juvenile committee is a separate subcommittee of the adult End of Sentence Review Committee (ESRC) as there has always been recognition in our system that juveniles are different than adults and should be treated accordingly. The level determined by the committee is a recommendation to local Law enforcement who continues to have the final level determination.

Community Notification is handled by local law enforcement and they, as the entity responsible for notifying the public, have the ability to release level 1 information under special circumstances as specified in RCW 4.24.550, Sex Offender and Kidnapping Offenders – Release of Information to Public. As of December 2013, approximately 87% of youth with a sex offense requiring registration are under the supervision of the JJ&RA or a County Juvenile Court, and are classified as a Risk Level 1.

Juvenile Offenders are Different than Adult: Adult and juvenile sex offenders are different. Based on the years of experience in working with the juvenile sex offender population, the JJ&RA believes there is the potential for harm to level 1 juvenile sex offenders if their information is made available to the general public. The impacts are different for juveniles than the adult population, based on where they are at in their formative developmental years as demonstrated though neurological and social science (July 2009, Dr. Terry Lee, Adolescent Brain Development PowerPoint Presentation) (2005, Roper vs. Simmons, United States Supreme Court ruling). It is important to know that there is a significant number of the level 1 juvenile offender population with adjudicated sex offense behavior that occurred at very young ages, with the highest frequency occurring between the ages of 12-15 years of age (2009, Washington State Sex Offender Policy Board, Annual Report to the Legislature). Because of their early age linked

to their sexual behavior, and absence of paraphilic interests, treatment interventions are often more successful with juveniles than their adult counterparts (2006 Hunter, John. Understanding Diversity in Juvenile Sexual Offenders: Implications for Assessment, Treatment, and Legal Management).

The Washington State Sex Offender Policy Board (SOPB) felt so strongly that there are inherent differences between the juvenile and adult sex offender populations, that they recommended the creation of separate statutes to address these differences both related to juvenile community notification and registration (2009, Washington State Sex Offender Policy Board, Annual Report to the Legislature) . Additionally, there has been acknowledgement by the Washington State Legislature that juveniles should be treated differently than adults when in the 2009 Legislative Session they passed SSB 5236: **Concerning notice to individuals convicted of a sex offense as a juvenile of their ability to terminate registration requirements**, during the 2009 legislative session. This law requires that no less than annually, the Washington State Patrol (WSP) must notify sex and kidnapping offenders who committed their crime as a juvenile about their ability to petition for relief from registration. During public testimony of this bill, it was noted that many sex offenders who were convicted as juveniles do not know that they have this right. It impacts their ability to find employment and housing, and often subjects them to harassment.

Impacts of Release of Level 1 Juvenile Sex Offender Information:

Community Notification for level 1 juvenile sex offenders, which is the outcome of releasing their information via public disclosure, would have varied and harsh consequences for these youth which may last a lifetime. Juvenile offenders, particularly sex offenders, already have many challenges in re-integrating into society and this would be another challenging obstacle. The release of their information would likely negatively impact a variety of known risk factors, which may ultimately increase their risk for participating in future criminal behavior. The anticipated impacts include but are not limited to:

- Additional barriers to admission in school programs at all levels impacting employability,
- Increased victimization and bullying by both peers and adults leading to social isolation,
- Significant barriers to the development of normal social/peer relationships which may lead them to develop relationships with anti-social peers,
- Additional barriers to employment which may lead to increased homelessness and general delinquency,
- Additional barriers to obtain housing, resulting in increased homelessness,
- Lasting social stigma impacting their ability to develop normal peer relationships and be socialized in a pro-social manner,
- Inability to experience normal adolescent development, increasing risk for future delinquent behavior,
- Inability to maintain family relationships or experience normal intimate relationships.

It is of paramount importance to note that youth with juvenile sex offenses have extremely low re-offense rates according to both national and in-state research data. A meta-analysis demonstrates sexual recidivism rates that range from 3-14% (2006, Reitzel, L., Carbonell. The Effectiveness of Sexual Offender Treatment as Measured by Recidivism). Additionally, evaluations completed by the Washington State Institute for Public Policy indicated sexual recidivism rates at 10% and 9% in two separate evaluations with 5 year follow ups that included both misdemeanor and felony sexual re-offenses (1998, WSIPP. Sex Offenses in WA State: 1998 Update. Document No. 98-08-1101, and 2008, R.Barnowski. Assessing the Risk of Juvenile Sex Offenders Using the Intensive Parole Sex Offender Domain. Olympia: WSIPP, Document No. 08-05-1101). The recidivism rates for the WSIPP studies include all levels of juvenile sex offenders from the lowest level 1s to the highest risk level 3s. It is reasonable to assume that if we the analysis only looked at level 1 offenders, the rates would be even lower.

Conclusion: Release of level 1 juvenile sex offender information would be the equivalent to broad based community notification which is generally reserved for the highest risk sex offenders in our state. This would functionally eliminate our tiered risk level approach to community notification which the Legislature and many other system partners have worked diligently over the last 20 plus years to develop, implement and improve. Release of SSODA evaluations for youth supervised by the juvenile courts, and who are generally the lowest risk juvenile sex offenders in the state would violate a variety of statutes and cause significant harm to impacted youth, their families, and victims. Release of any of this information would impact known risk factors in a negative manner.

Finally, hundreds of youth and their families may be harmed by such action which runs contrary to everything the JJ&RA knows to be effective in managing the juvenile sex offender population and providing treatment, supervision and rehabilitation to the youth and families we serve.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 20th day of May, 2015, at Olympia, Washington.

DAWN MARIE HICKS
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
NOVEMBER 26, 2017

JOHN CLAYTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
JUVENILE JUSTICE AND REHABILITTION ADMINISTRATION
ASSISTANT SECRETARY

Dawn Marie Hicks
[NAME]

5-20-15 Olympia
Date and Place

EXHIBIT 19

☐ EXPEDITE
☐ No Hearing Set
☑ Hearing is Set
Date: July 17, 2015
Time: 11:00 AM
Judge/Calendar: Hon. Carol Murphy / Civil Calendar

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

JOHN DOE P, JOHN DOE Q, JOHN DOE R, and JOHN DOE S, a minor, by and through his legal guardian JANE ROE S, as individuals and on behalf of others similarly situated

Plaintiffs,

v.

THURSTON COUNTY, a municipal organization, and its departments THURSTON COUNTY PROSECUTING ATTORNEY and the THURSTON COUNTY SHERIFF

Defendant

v.

DONNA ZINK, a married woman

Requestor

No. 15-2-00094-0

DECLARATION OF JOHN DOE P IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

I, John Doe P, declare as follows:

1. I am over the age of 18 and competent to make this declaration. I live, and always have lived, in Thurston County, Washington.

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2. I am a registered sex offender, classified at risk level I. I've been registered for about 5 years and I've been classified at a level I for the entire time I was registered. I am registered because of my conviction for having sexual contact with my younger girlfriend. We had a romantic relationship for a few months after being friends for several months. At the time of the offense, she was 15 and I was 19, almost 20. After we broke up, she told her family about the sexual contact and I was arrested.

3. I have no other criminal history.

4. I spent a month in jail and was also ordered to do community service, treatment, and probation. I've complied with supervision and treatment. As a condition of probation, I'm required to check in with the Sheriff's office once a month and take regular polygraphs. I've done everything I was asked to do. I was released from probation this year.

5. Treatment has been going well. I've been in group sessions regularly for the past 5 years. I remember doing an evaluation before I could get a treatment sentence. The evaluation was very broad, asking all sorts of questions about my personality and my mental state, and medications and health conditions. They also asked about my sexual history and preferences. It was all very personal but I did the evaluation so I could get treatment. I graduated from treatment when I was released from probation.

6. Right now, I'm working for a family member's construction business. It's been very hard to get another job. I would like to attend college and be an engineer, but my job doesn't pay enough to cover the cost of treatment and the gas to get to school, much less my tuition.

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7. I was told that a member of the public requested all registration forms and a database of registered sex offenders from Thurston County. My name and personal information could be released on that list.

8. Having my name on a public list of sex offenders would be socially devastating; it would be devastating to my family. My entire family lives in the area and people would judge my family by my mistake. It would also negatively impact my church community, because they could be judged or harmed for accepting me. It would possibly put my life and the lives of those around me in danger from vigilantes.

9. I know that sex offenders are targets from vigilantes. There have been people in my previous therapy sessions who were level II, and you could see the difference between their lives and the lives of level Is who aren't on the public registry. They get roughed up or harassed by other people who can just look them up online. They're in the boiling pot and people see them as horrible murderous rapist, no matter what they did.

10. If the registration information were public, anybody would know where I live. People would be able to knock on my door just because I am a sex offender. It would be terrifying, even more than just background checks by employers. I would be a target for anyone, even people who don't know my name.

11. I've told very few people about my registration, and only those who I completely trust. My immediate family knows, and so do the family members and close family friends who serve as my chaperones when I have contact with younger people. I'm also very active in my church and have told my clergy members.

12. I regret my offense every day, and I'm trying the best I can to repair the damage, reach my full potential, and be a good person. Sometimes

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it doesn't feel as if the system is willing to give me a second chance.

I declare under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct.

John Doe P

John Doe P

06/17/2015 THURSTON

Date and Place

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EXHIBIT 20

☐ EXPEDITE
☐ No Hearing Set
☑ Hearing is Set
Date: July 17, 2015
Time: 11:00 AM
Judge/Calendar: Hon. Carol Murphy / Civil Calendar

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

JOHN DOE P, JOHN DOE Q, JOHN DOE R, AND JOHN DOE S, as individuals and on behalf of others similarly situated,

Plaintiffs;

v.

THURSTON COUNTY, a municipal organization, and its departments THURSTON COUNTY PROSECUTING ATTORNEY and THURSTON COUNTY SHERIFF

Defendant;

v.

DONNA ZINK, a married woman,

Requestor.

No. 15-2-00094-0

DECLARATION OF JOHN DOE Q

I, John Doe Q, declare as follows:

1. I am over the age of 18 and competent to make this declaration. I live in Thurston County, Washington.

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2. I have been registered as a sex offender for almost 10 years. I have been a level I offender since I was required to register because of a conviction for rape of a child in the third degree. The incident that led to conviction happened in 2003.

3. At the time of the incident, I was going through a period of deep depression, struggling with post-traumatic stress disorder, and drinking very heavily. I made stupid choices and I was no good to anyone in my life. I'm not making excuses for this. I have no one to blame but myself for my mistakes, but it was basically rock bottom for me.

4. After I was charged, and on my lawyer's recommendation, I did a SSOSA evaluation. The evaluation was awful. It was the worst thing I've ever had to endure mentally, worse than being in the military. The counselor made me discuss my home life, my family life, my childhood, everything about my life up to that point. We talked about substance abuse and mental health issues, not just for me but also about my family. The evaluation revealed things about me that I hadn't ever put together, it showed me how big the gap was between where I was in life and where I wanted to be. I knew I could be better than that and treatment could only help. Still, I thought the SSOSA evaluation would be confidential. It was psychiatric care, and I thought that the evaluation would be between me and my therapist, and the court at most.

5. I received a SSOSA sentence. I spent several months in jail and then was released to do treatment. I did treatment every week for 3 years and had to take regular polygraphs. Treatment was helpful. It made me focus on me and what I'd done wrong. It taught me a lot about empathy and how to be a better person. I successfully completed treatment and probation and have been off probation for about 4 years.

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6. I'm a parent to three children. My oldest child is living at home and my youngest child is still in school. My wife stayed with me through all of this. She owns her own business and I help her with the business. At this point, I'm just trying to get by and pay the bills, and be a good father and husband to my family.

7. I received a notice from the Thurston County Sheriff that a member of the public has requested sex offender registration records and that my records would be released. I know that the release of that information would harm me. I'm living in my hometown, where I grew up and I know everyone. If they released my records on a list of sex offenders, people wouldn't talk to me. I'd be ostracized. A few years ago, I told a friend of many years about my registration. The friend stopped talking to me and my entire family. People could also try to attack me – when I was in jail, a bunch of people beat me up pretty badly because I was there for a sex offense. I can see that happening again. When I was in therapy, a couple of guys in my group were on a public registry and they had people banging on their doors at all hours and beating them up.

8. I'm most scared about the impact on my family members. My wife runs her own business, and I know that her business would suffer simply because she's associated with me. She and I have even talked about it and I feel like if this release happened, we may get a divorce. It's not because we don't love each other or don't want to be together – I just don't want my family to have to move out of town and destroy their business. I'd do anything to protect my family, even if that means I can't be a part of it.

9. I'm most worried about the impact on my children. My oldest child knows about this, but my youngest child was so young when it happened that she doesn't really understand. It would be really hard on both of them. Kids can be so cruel, and my

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youngest child in school would be harassed. When I was in therapy, other guys in the group had their families and children harassed because they were related to sex offenders. I don't want my children to have to go through the trauma.

10. My registration is for a limited period, and I'm almost done. In only a couple of months, I can be relieved from registration. It's hard to feel like I'm almost at the end and I've changed so much and I can't get past this.

I declare under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct.

John Doe Q
John Doe Q

6/15/15
Thurston County Washington
Date and Place

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EXHIBIT 21

SUPERIOR COURT OF WASHINGTON IN AND FOR THURSTON COUNTY

JOHN DOE P, JOHN DOE Q, JOHN DOE R and JOHN DOE S, a minor by and through his legal guardian JANE ROE S, as individuals and on behalf of others similarly situated,

Plaintiffs;

v.

THURSTON COUNTY, a municipal organization and its departments, the THURSTON COUNTY PROSECUTING ATTORNEY and THURSTON COUNTY SHERIFF

Defendant;

v.

DONNA ZINK, a married woman,

Requestor.

No. 15-2-0094-0

DECLARATION OF JOHN DOE R

I, John Doe R, declare as follows:

1. I am over the age of 18 and a resident of Thurston County, Washington. I am competent to make this declaration.

2. I was convicted of a sex offense in Washington juvenile court over 5 years ago. I received a SSODA sentence and did treatment. I finished treatment and all the requirements of my sentence.

3. I was relieved of the duty to register as a sex offender last year. During the time I was registered as a sex offender, I was always a level I and was always registered in Thurston County. I also recently had my juvenile court records sealed.

4. I did an evaluation so that I could get court-ordered treatment. The evaluation was very personal, and but I talked about those things with my therapist so that I could do better in treatment and she could help stop me from going down the track of doing bad things again.

5. I feel like release of my records to the public would destroy my life. The label sex offender causes people to lump me in with the worst offenders. I'd be concerned for my own safety, because I've seen on T.V. and in the news how people have gone after sex offenders and hurt them. I don't want to be next.

6. I haven't told anyone about my registration, outside of my family and one close friend who's like a brother. I don't tell my other friends because I'm worried about how they'd treat me. When I was in school, every time sex offenders would come out, people would act like they were the scum of the earth. It made me just stay away from everyone so that I didn't get hurt. If my records were released, I'd feel scared like that again.

7. I want to get a job and work in technology. I feel like being relieved of registration helped somewhat in getting me closer to jobs, but I'm very worried that release of my records would destroy that.

I declare under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct.

John Doe R
John Doe R

6/19/15
Date and Place

EXHIBIT 22

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THURSTON COUNTY

JOHN DOE P, JOHN DOE Q, JOHN DOE R, and JOHN DOE S, as individuals and on behalf of others similarly situated

Plaintiffs,

v.

THURSTON COUNTY, a municipal organization, and its departments THURSTON COUNTY PROSECUTING ATTORNEY and the THURSTON COUNTY SHERIFF

Defendants

v.

DONNA ZINK, a married woman

Requestor

No.

DECLARATION OF JOHN DOE S

I, John Doe S, declare as follows:

1. I am over the age of 18 and am competent to make this declaration. I am a resident of Thurston County, Washington.

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2. I am currently registered as a sex offender based on a juvenile adjudication from over 20 years ago. I was 13 at the time of the incident leading to my conviction. The victim was my younger sister.

3. I pled guilty and completed two years of weekly sex offender treatment, both in a group environment and in an individual setting. I voluntarily continued sex offender treatment for an additional two years. Though intensely personal and difficult, treatment helped me to understand what I had done wrong and helped me to slowly develop much needed self-esteem. I always believed that what was discussed in therapy was strictly between the therapist and myself and that it would not be shared with anyone else.

4. I am registered as a level I offender and am compliant with the conditions of registration. I have been a level I offender the entire time I have been registered. I have no other criminal history.

5. I received a notice from the Thurston County Sheriff that my registration records will be disclosed to a member of the general public. The release of my records would harm myself and my family immensely.

6. I met my wife when I was 17 and we have been married for 18 years. We have two young children, both in grade school. They are doing great in school and are very active in afterschool sports. My wife works in education, is active in coaching youth sports in the community, and is in the PTA.

7. I have been working at the same job since 1998. I love my work and my job, and I look forward to contributing to a team environment every day. My coworkers and my employer do not know that I am a level 1 sex offender. I believe I would lose my job if

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they found out as a result of my records being released.

8. I also fear for my safety if I am publically identified as a sex offender. During group therapy sessions, members of my group were regularly harassed and beat up because people found out that they were sex offenders. Several of the members had to move to maintain their safety.

9. I am more concerned that the release would harm my sister, who was the victim of my offense. My sister also went through therapy as a result of my actions. We have worked hard to move on with our lives. We have an excellent relationship and talk fairly regularly. She is a wonderful person and deserves to move on with her life. Release of my records would make it difficult for her to continue to do this.

10. I am also concerned about my family suffering harm as a result of my records being released. My wife and children are innocent and did nothing to deserve any harm. If my records were released, I believe my wife would be ostracized from the community and that she would lose her job. My children would be ridiculed and made fun of. It breaks my heart to think of my family suffering for my actions. I have been told several times by the Thurston County Sherriff's office that I am eligible to petition for relief from registration and I am planning on hiring an attorney to help me through this process. My wife supports me and wants me to be removed from the registry. My sister also supports me in this process. I have begun the process of petitioning for release from registration and hope to have the petition filed this year.

11. In addition to my sister, wife, and children, I fear that the release of the records would also harm my parents. My mother in particular, who works for the state, would be ridiculed if her coworkers and friends found out

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about my sex offender status. We share an unusual last name and it would be very easy for people in the community to make the connection.

12. I am involved in the community in Thurston County. I've donated monthly to the United Way of Thurston County for at least the last 10 years. I've also worked with Habitat for Humanity. I love Thurston County and have lived here for nearly my entire life. It is my home and my family's home and I want to continue to live here. However, if the records were released my family and I would probably have to move and leave Thurston County. I made a mistake when I was young and have done everything required of me since that time.

I declare under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct.

John Doe S

John Doe S

6-18-15

Date and Place

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